No. 21-707

In the
Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,
Petitioner,
v.
UNIVERSITY OF NORTH CAROLINA, et al.,
Respondents.

On Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENTS

STUDENT #1 - GRACE WOLLMUTH
Lake Oswego High School
2501 Country Club Road
Lake Oswego, 97034

STUDENT #2 - ELIANA CHOI
Lake Oswego High School
2501 Country Club Road
Lake Oswego, 97034

12/8/22

QUESTIONS PRESENTED

Is race conscious affirmative action consistent with the Fourteenth Amendment to the United States Constitution?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

PAGE(S)

LAW

JURISDICTION

This case comes to the court on writ of certiorari from the United States Court of Appeals for the Sixth Circuit, arising under jurisdiction granted by 539 U.S. 306.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment, U.S. Constitution

amendment XIV, provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FACTS

In 1997, Barbara Grutter, a white Michigan resident, applied to the University of Michigan Law School. While the University of Michigan Law School did not have a specific quota of racially diverse students, they were looking for a "critical mass" of minority students. They claimed that race was considered holistically, among other important factors, in student's applications. Despite a 3.8 GPA and a 161 LSAT, she was denied admission to the school and believed that, in her case, the decision was solely based on race. She sued the University of Michigan Law School for violating the Equal Protection Clause of the 14th amendment. The district court sided with Grutter, claiming that diversity was not a compelling governmental interest. The University of Michigan Law School appealed and the Appeals court sided with them, continuing the previous precedent of California vs. Bakke (1978) and established that diversity was a compelling state interest, putting affirmative action under strict scrutiny.

The Supreme Court, the justices ruled that race could and should be used as a factor in determining admissions, so long as it is not mechanized. In the years following this case, affirmative action has been considered under strict scrutiny. The consistent rulings have show the court's viewed of affirmative action as positive discrimination to promote equality, diversity, and inclusion, as long as colleges and universities don't mechanize their system or put too much emphasis on race as a deciding factor.

SUMMARY OF ARGUMENT

The Fourteenth Amendment does not prohibit race conscious decisions in state university admissions processes. Our nation has aimed to promote diversity and racial justice, especially considering the historical mistreatment towards marginalized groups. In order to combat this racism, we have passed the Fourteenth Amendment and legislation such as the Civil Rights Act of 1964. However, the consequences of our discrimination can still be seen today. Promoting social and economic mobility among historically marginalized groups is the only way to repair the damage done. The banning of affirmative action would place this heavy burden on students, offering them no support against hundreds of years of oppression.

Affirmative action policies have been upheld since the first affirmative action case in 1978, in University of California v Bakke, where the Supreme Court decided that diversity is a compelling state interest and race can be a factor in decision making, so long as it is not the only factor. This precedent has been validated by Grutter v Bollinger and Fisher v University of Texas, where the Court has continuously upheld that affirmative action allows for the benefits of diversity. We agree with Justice O'Connor's belief that affirmative action should not be a permanent policy; however, affirmative action is still needed due to the disparity between the

historically oppressed and the historically privileged. The dangers of reversing the precedent stand clear with examples like Proposition 209 that prove banning affirmative in the current state of our society will negatively impact all races and economic classes.

ARGUMENT

I. The historical aim of the Fourteenth Amendment is to defend the rights of minority groups, and has been supported by subsequent legislation.

A. The Fourteenth Amendment was written to address Black Codes and Jim Crow laws during the Reconstruction Era.

The Fourteenth Amendment was passed by the Senate in 1866, and ratified two years later in 1868. It was passed to combat Black Codes and Jim Crow laws that attempted to legalize segregation. The Amendment was composed by American politician John Bingham who convinced the Joint Committee on Reconstruction to expand the language of the Constituition beyond racial discrimination towards former slaves, and apply equal protection for all minority groups by extending the Fourteenth amendment to all "citizens of the United States."

B. Brown v. The Board of Education declares that segregated schools are unconstitutional.

Diversity in the education system has been the country's priority since the 1950s in Brown v. Board of Education which ruled that segregated schools are unconstitutional. Chief Justice Earl Warren focused strictly on the impacts of segregation and declared

that separate facilities are inherently unequal because it "generates a feeling of inferiority in the community that may affect their hearts and minds in a way unlikely to ever be undone" (347 U.S. 483 [1954]). good use of quote but need citation Affirmative action prevents segregation based on class, race, sex, and ethnicity, and works to eliminate unlawful discrimination. By continuing to include groups who have historically been discriminated against, we promote social mobility and enable collaboration between students with a diverse range of backgrounds and perspectives.

C. The Civil Rights Act of 1964 outlawed "discrimination on the basis of race, color, religion, sex or national origin" _____.

The Civil Rights Act of 1964 established the Equal Employment Opportunity Commission, which seeks to enforce civil rights legislation in the workplace. Their Compliance Manual 607 addressed "reverse discrimination" claims in affirmative action cases. While Title VII does not make a distinction between discrimination against historically marginalized groups, the EEOC states that "However, the Commission recognizes that race, sex, and national origin conscious decisions may be required in order to eliminate the effects of past discrimination and the adverse effects of present policies and practices." In other words, affirmative action designed to uplift minorities may be necessary

to combat the centuries of systematic racism enforced against these groups.

II. Affirmative action has existed in other forms in the past.

A. The Bureau of Refugees, Freedmen, and Abandoned Lands aimed to provide the formerly enslaved with the means to become self-sufficient, through methods such as issuing supplies and land, establishing educational institutions, and offering medical care.

From reuniting families to building over a thousand schools, the Bureau enhanced the efforts of the Reconstruction period. Though the Bureau was discontinued in 1872, it highlights an important point: the idea of paying reparations against those who have been harmed by systemic injustices. This will be necessary until the people of the country feel that past injustices have been made up for. The effects of the seizure of Native lands and the legacy of slavery still hurt many people today. To this day, Congress has not fully accounted for some of these policies. Providing opportunities for higher education and social mobility to these people is necessary in order to combat the historical and economic damage done.

III. Affirmative action has existed within public and private institutions prior to 1978.

In University of California v. Bakke (438 U.S. 265 [1978]), Allan Bakke sued the University of California Medical School at Davis for rejecting him due to his race. Previously, the medical school had been using quotas for different races to ensure diversity. This made it so members of each race were competing only against their race for a limited number of spots. Bakke claimed that although he did not make the cut amongst applicants of his own race, he would have been admitted if he had been in one of the other groups, because of his higher test scores and the objective nature of acceptance based on scores at the medical school. When this case was presented to the court, there were two main questions at hand: Was the University of California violating the Equal Protections clause of the Fourteenth Amendment? Can colleges consider race when determining college admissions? In this case, the Supreme Court found that the compelling state interest was diversity because it is to everyone's benefit to have a student body with a wide variety of perspectives. They ruled in favor of affirmative action and claimed that it can be a consideration in the application process as long as it is not the only deciding factor. The court should continue to uphold previous precedent to constitutionally promote equity, diversity, and inclusion in public education systems. To treat every person equally, their needs must be taken into account and the only way to do this is to allow these considerations through affirmative action.

Another landmark case on affirmative action was Grutter v. Bollinger which reached the Supreme Court in 2003. In this case, the University of Michigan Law School was looking for a "critical mass" of minority students, however, they did not have a specific quota of students that they were aiming for. Race instead was considered

holistically and the courts ruled that this was legal. Race could and should be used as a factor in determining admissions, so long as it is not mechanized. In this decision, Sandra Day O'Conner said that affirmative action was useful in creating a "pipeline" of diversity into the middle class which would cause affirmative action to be only necessary until 2028. However, while affirmative action in educational institutions across the country has created an influx of diversity in the middle class, there are still too few Black and Hispanic families in the middle class and upper classes. According to the Board of Governors of the Federal Reserve System notes, Black and Hispanic households hold only 2.9 and 2.8 percent of the wealth, respectively, while accounting for 15.6 and 10.9 percent of the United State population (Aladangady and Ford FEDS Notes). These numbers have increased since 2003, which shows the positive effect of affirmative action, but there is still work to be done. This is because racism and classicism are systemic issues that will never be permanently gone due to the history of our country. Affirmative action helps mitigate the gap between those who have been historically discriminated against and those who have privilege and ensures equality in economic opportunities.

While some claim that affirmative action is discriminatory, banning the consideration of race in admissions decisions feeds into the systematic racism which has negatively impacted many for centuries. For example, in 1996, voters passed Proposition 209 which amended the California state constitution and shut down the use of affirmative action in the California State University system decision making process. According to the UCLA Civil Rights Project (CRP 1996), underrepresented minority groups

felt less respected at the University of California schools. There was additional survey information that included eight University of California schools and confirmed that the racial climate on campus became significantly more uninviting and hostile for Latino and African American students. Proposition 209 not only affected students during their time at the school, but also impacted professional fields such as medical school, law school, and other public post-graduate institutions. There was a drop of enrollment from California School system minority groups in these selective institutions.

A "colorblind" admissions process may lead to more problems than it has helped to solve. "Erasing" race would negatively affect minorities because it would erase parts of their stories and their struggles, which have shaped them to be the person they are, and deprive admissions officers from a thorough understanding of their backgrounds. Do the petitioners believe that writing about one's race and identity should be banned within admissions essays, to truly be "race-blind" in the process? A. Workplaces would return to being dominated by white men, despite past efforts to reverse this situation.

Additionally, the removal of affirmative action places the overwhelming burden of overcoming centuries of systemic barriers due to racism on individual students which could impact their mental and emotional well being. Students are the ones who have the potential to shape our nation and society, and efforts to promote dismantling racism must be supported. Without affirmative action policies, disparities between the privileged and the minorities would only be furthered and could lead to the return of heavily segregated schools and prevalent discrimination across the workplace. This goes against beliefs stated in the founding legislatures of

our nation, such as the Declaration of Independence and the Constitution.

CONCLUSION

For these reasons, the Fourteenth Amendment allows for race-conscious decisions in college admissions. This decision has been upheld in many recent cases, and the Supreme Court has defended diversity as a compelling state interest. We do not believe that our nation is in a state where this can be reversed now, due to disparities between those who benefit from affirmative action and those who are in a position of privilege. Even after the twenty-five years allotted, there is no way to be sure that we will have an even playing field, as past injustices and damage are not erased so easily. This will only be clear when we have clear shifts in data that show increased equality. Placing the responsibility of overcoming history on the students themselves is unfair, and we should do everything in our power to support these people.

If the University of California vs. Bakke is reversed, it leads us to wonder if the petitioners will use the same logic in other situations, such as affirmative action in the workplace or the military. Schools and jobs being filled with a homogeneous majority will further rather than dismantle racism. If applied to the workplace, past efforts attempting to provide more job

opportunities and equal pay for women may be challenged. The dangers of reversing affirmative action stretch far and wide, and will negatively impact many people.

Respectfully submitted,

STUDENT #1 - GRACE WOLLMUTH
Lake Oswego High School
2501 Country Club Road
Lake Oswego, 97034

STUDENT #2 - ELIANA CHOI
Lake Oswego High School
2501 Country Club Road
Lake Oswego, 97034

12/8/22