Nos. 21-707

In The
Supreme Court of the United States

Students for Fair Admissions, Inc.,
Petitioner,
V.
University of North Carolina, et al.,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE FIRST AND FOURTH CIRCUITS

BRIEF FOR PETITIONER

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12/4/21

Questions Presented

Should this Court overrule *Grutter v. Bollinger*, U.S. 306b (2003), and hold that institutions of higher education cannot use race as a factor in admissions?

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Act of June 21, 1866, ch. 130, § 2, 1866 Stat. 69, 14 Stat. 66

Opinions on California's Proposition 209 (1996) found at https://ballotpedia.org

Graphs showing effects of Proposition 209 (2020) found at https://www.latimes.com

Facts on Grutter v. Bollinger (2003) found at https://www.oyez.org/

Facts on Fisher v. University of Texas Austin (2012) found at https://www.law.cornell.edu

Facts on Brown v. Board of Education (1954) found at https://www.archives.gov

Description of Stare Decisis Factor found at https://constitution.congress.gov

SUMMARY OF ARGUMENTS

The text of the XIV Amendment of the U.S. Constitution supports equal protection under the law for all persons regardless of race.

In *Grutter v. Bollinger*, a white student with adequate qualifications applied to the University of Michigan Law School but was denied admission. In a 5-4 decision by the Supreme Court, it was decided that the use of race was ok as part of "individualized" decision processes.

Grutter should be overturned because it is an outlier to other precedents surrounding the topic of equal opportunity for all and because the decision violates previous precedents set declaring equal opportunity to education for all.

In addition, *Brown v. Board of Education* addresses racial segregation as students were denied access to education purely on a racial basis. If an admissions process views race as a deciding factor, how can an institution be in line with the Equal Protection Clause and not violate the XIV Amendment?

The goal of *Grutter v. Bollinger* was for the University of Michigan to increase the diversity of the student body. While this is not only unconstitutional, there are more efficient alternatives to increase diversity such as California's Proposition 209 which removed affirmative action considerations.

Another case of affirmative action Fisher v. University of Texas at Austin was deemed unconstitutional in a 7-2 decision as the text of the XIV amendment, "prohibits governmental descrimination on the basis of race."

Not only does *Grutter v. Bollinger* need to be overturned due to its discriminatory nature, holding certain demographics above others diminishing the equal chances of all students.

ARGUMENT

I.Grutter needs to be overruled.

"The court should overrule *Grutter* v. *Bollinger*, 539 U. S. 306 (2003), and hold that a state's use of race in higher education admissions decisions is categorically prohibited by the Equal Protection Clause." (Thomas, J.). Courts rarely overturn decisions. When there is a consensus to overrule a past decision, "There are several factors the Supreme Court weighs when determining whether to reaffirm or overrule a prior decision interpreting the Constitution." We will be focussing on the factor of, "the precedent is a recent outlier when compared to other decisions." (*Stare decisis factors*). When it comes to *Grutter v. Bollinger*, the decision falls directly into this factor and needs to be overruled.

A. *Grutter*'s decision is an outlier to recent precedents.

In *Grutter v. Bollinger* 539 U.S. 306 (2003), the University of Michigan, " [admitted] that it uses race as a factor in making admissions decisions because it serves a 'compelling interest in achieving diversity among its student body.'" Despite this clear violation of the 14th Amendment, the court ruled that race, under the right circumstances, could be used to factor students for their possible admissions. However, this ruling has become outdated and has been contradicted by more recent

cases. In *Fisher v. University of Texas at Austin I,* 570 US 297 (2013), Abigail Fisher argued that the University of Texas at Austin violated the Equal Protection Clause by having too large of a weight on race when looking at an applicant's profile. The Supreme Court ruled that the University of Texas at Austin's factor of race was not narrowly tailored enough to satisfy strict scrutiny. Justice Scalia added that, "The Constitution proscribes government discrimination on the basis of race, and state-provided education is no exception." (Justice Scalia, 2013). But providing equal racial opportunities has been an obvious precedent in related areas to college. The *Grutter v. Bollinger*'s contradiction stretches beyond solely colleges. *Ricci v. DeStefano*, 129 S. Ct. 2658 (2009) is a case where a fire station was sued by twenty of its applicants for allegedly being denied because of their race. Due to the almost a 100% acceptance rate of white people, the station canceled the applications and zero jobs were given. The Supreme Court ruled this a violation of Title VII of the Civil Rights Act of 1964 which, "prohibits employment discrimination based on race, color, religion, sex and national origin." (Civil Rights Act, 1964). The ruling of this case gaurenteed that, "that the workplace be an environment free of discrimination, where race is not a barrier to opportunity." (law.cornell.edu). While rare, overruling past precedents when it comes to equal educational opportunities has happened, and it needs to continue with the overturn of *Grutter*.

B. *Grutter* violates the precedents establishing the right for equal opportunities on the basis of race.

The *Grutter* decision was doomed from the very start, as it was a decision that provided unequal

opportunities for the applicants applying. When it comes to equality in education, precedent has been changed many times. One of the first precedent-changing decisions involving equal educational opportunities was *Brown v. Board of Education,* 347 U.S. 483 (1954). The case was a major change as it, "marked the end of the "separate but equal" precedent set by the Supreme Court nearly 60 years earlier in *Plessy* v. *Ferguson*." (archives.gov). The case established that every race shall have equal opportunity to education in state schools. The *Grutter* decision removes that equal opportunity to education, as Michigan Law School can now use race when determining who will receive their education. This decision violated the precedent that *Brown* set and has yet to be changed. The case of *City of Richmond v. J. A. Croson Co.*
488 US 469 (1989), was a case where the city of Richmond required that at least 30% of a business's construction plan needs to be reserved for a minority business firm. The Supreme Court shot down the regulations, "alleging that the Plan was unconstitutional under the Fourteenth Amendment's Equal Protection Clause" City of Richmond v. J. A. Croson Co., 488 U.S. 469 (1989). The decision set the precedent, "that the workplace be an environment free of discrimination, where race is not a barrier to opportunity." (law.cornell.edu). If the workforce is a race-neutral system, then shouldn't the state institutions that create such workforce be race-neutral as well? It's time to create a fully race-neutral system rather than one where race creates an inequality in opportunity. It all starts with the overturning of *Grutter v. Bollinger.*

2. The University of North Carolina's affirmative action policy should be abolished.

University of North Carolina's affirmative action policy should be abolished because it violates the Equal Protection Clause of the XIV amendment and also there are more effective race-neutral alternatives that don't fall under strict scrutiny.

A. The Affirmative action policy fails strict scrutiny.

The text of the 14th amendment of the U.S. constitution states that, "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." (U.S. Const. Amend. XIV). The Equal Protection Clause within the XIV amendment ensures that all persons have equal protection under the law. This precedent is the basis for many Supreme Court decisions since. The University of North Carolina's policy for affirmative action makes race too strong a factor in deciding admissions. The Students for Fair Admissions, the SFFA, argue that the increased weight of this one particular question, that of race, is overpowering and causes an unfair decision to be made on one's application. UNC has admitted that it uses, "race as one of many factors in its admissions process" but claims that it adheres to the requirements outlined in Grutter v. Bollinger. However, the requirements introduced after the decision of the Grutter v. Bollinger cases are inherently unconstitutional under the XIV Amendment and fall under strict scrutiny.14th If one particular group is given a higher priority in a pool of well qualified admissions that would then directly disobey the rights guaranteed by the Equal Protection Clause as not everyone would be "equal". Again in Brown v. Board of Education, we see that students were denied solely on their race. If an admissions process such as the University of North

Carolina's, view race as a deciding factor, how can an institution be inline with the EPC and not violate the XIV amendment?

Of course Brown v. Board of Education was a successful attempt to overrule the separate but equal doctrines of Plessy v. Ferguson. These doctrines supported racially segregated public facilities, such as schools, as long as the facilities were equal for black and white people. In Brown v. Board of Education, it was decided that the "separate but equal" educational facilities violate the Equal Protection Clause of the XIV amendment because it instills inferiority against a specific group. While UNC is not "separate", its educational facilities cannot be equal if a certain race improves one's chance in the admissions process.

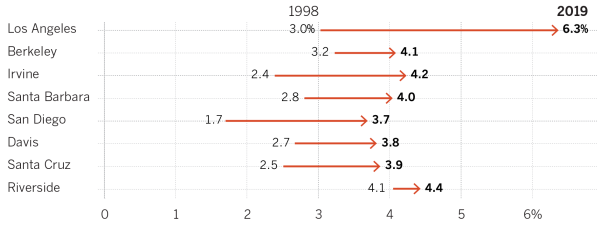
The University of North Carolina's affirmative action policy, one that prioritizes a group of people over another, goes against the text of the Fourteenth amendment. To truly be an equal system of admissions and therefore equal among all students, UNC's motivation to acquire a more diverse student body turns out to be unequal, as students who are more than qualified to attend the university are replaced by another. It is not equal to decide who, based on race, goes to an institution simply to improve a statistic.

B. A race neutral alternative is more effective.

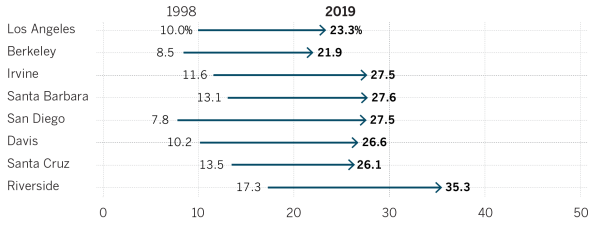
A more diverse student population is beneficial for a university as it helps prove that a certain institution is inclusive and welcoming to its students. However, the University of North Carolina's affirmative action policy, an artificial attempt to augment the diversity rate within their school does not prove to be inclusive. UNC's affirmative action policy is unconstitutional under the XIV amendment but is also unnecessary when trying to improve diversity rates at a school.

In 1996, the California Civil Right Initiative; Proposition 209, says that, "The state shall not discriminate against, or grant preferential treatment to, any individual or group, on the basis

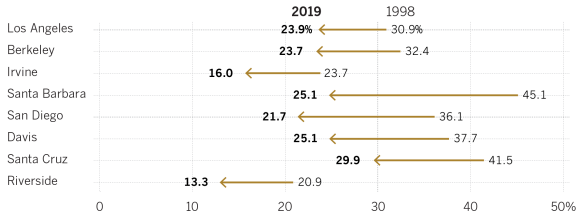
of race, sex, color…"(CCRI 1996). This meant that in state university applications, like those in the University of California schools, affirmative action would be eliminated. The opposition against Proposition 209 expected it would, "eliminate equal opportunity programs including: tutoring, mentoring, and outreach programs"(ballotpedia.org) especially among women and minority demographics. Despite their expectations, diversity within the UC system skyrocketed. By analyzing graphs from the LA Times, It shows the gaps of how racial representation varies by campus. You can see the drastic increase of diversity across all campuses (latimes.com).



: % of Black Students



% of Latino Students



% of White Students

Just looking at UC Berkeley, Latino representation jumped from 8.5% before Proposition 209 all the way to 21.9% in 2019. Black population increased from 3.2% to 4.2% (granted you consider the overall population, this is a considerable change).
The CCRI and its effects on the Universities of California prove that affirmative action is not

necessary in improving diversity . It also shows a race-neutral alternative is more effective than one that is in violation of the XIV Amendment. Additionally, Proposition 209 occurred only a year apart from when Barbara Grutter was denied by Michigan. If the same social and political circumstances of that time are considered, the same policy would have shown similar results in Michigan or anywhere else. (It was later in 2006 via the Michigan Civil Rights Initiative). Rather than using a system that falls under strict scrutiny, one that prioritizes statistics of diversity rather than giving all students an equal opportunity of quality education, University of North Carolina should look at alternatives that are race-neutral, that consider race more highly over other factors, and produce the same if not better results as seen in other state universities. Not only is their current method of admission selection unconstitutional, but it functions at a lesser quality than policy which is not in violation of the XIV amendment.

Conclusion

For the foregoing reasons, this Court should reverse the rulings of *Grutter v, Bollinger*.

Respectfully submitted,

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[12-9-2022]