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 PETITIONER

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QUESTIONS PRESENTED

Should this Court overrule *Grutter v. Bollinger*, 539 U.S. 306 (2003), and hold that institutions of higher education cannot use race as a factor in admissions?

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SUMMARY OF ARGUMENT

Affirmative action has helped so many people achieve their goals over the years sadly it must now come to an end because it is now becoming increasingly unfair to the people that do not benefit from it. In today's case, we are siding with the petitioner, the Students of Fair admission, and helping to prove that affirmative action is inconsistent with the 14th amendment to the United States Constitution. While we have found a lot of reasons why affirmative action is a violation of the 14th amendment, we have decided to go with these 4 reasons. Number 1 Affirmative action is now being used as a disadvantage due to the fact that the admission committee checks race and may use it as an advantage and disadvantage. Number 2 Affirmative action gives the minority population opportunities while taking away the rights and opportunities of the majority population. Number 3 Affirmative action was first enforced in a society different from that of today. And lastly, number 4 Affirmative action has nothing to do with equality and is barely based on equity which causes it to be unconstitutional.

ARGUMENT

I. Part I

Affirmative action is now being used as a disadvantage due to the fact that the admission committee checks race and may use it as a factor of acceptance and or may be used as a disadvantage. Race should not be used as a reason to be accepted or not accepted into a University and or School. As stated in Fisher Vs, The University of Texas at Austin, the respondent argues that to uphold a higher education system, a critical mass should be met to reflect the diverse society and prepare students for a diverse working society; however, as in Brown v Board of education, people can not be excluded because of their race. Although the situation of today and then are flipped, the logic remains the same. These statements prove that affirmative action should not choose which students should have a disadvantage or upper hand to being accepted because they were born with a certain race. When affirmative action was still trying to be accepted Senator Wilson argued In a debate over support for newly freed slaves, He argued that support was needed to counter discriminatory laws in the Southern states. A Republican senator from Pennsylvania Mr. Cowan disputed this allegation. He argued that the United States Constitution provides that the rights of free men cannot be violated. He pointed out that the Fifth Amendment already contains appeals against discriminatory laws. He concludes that laws providing special privileges and remedies should not be allowed to newly freed slaves

because the Constitution already protects all rights of all American citizens. Just how Senator Cowan argued in 1866 how the newly freed slaves shouldnt have some privileges and remedies due to the fact that they had already got rights in the constitution and in the fifth amendment along with that the times have changed which mean the community is more diverse naturally due to people being more accepting now. In 2003 during Grutter Vs. Bollinger Justice O'Connor also mentioned that while diversity on campus is an important aim, this type of affirmative action should have a time limit; She predicted that 25 years after the case, the use of racial preferences will no longer be necessary to further the interest approved today. To furthermore why affirmative action should not be used in college applications because they use racial preferences and in the 14th amendment that was Passed by the Senate on June 8, 1866, and ratified two years later, on July 9, 1868, the Fourteenth Amendment granted citizenship to all persons ``born or naturalized in the United States," including formerly enslaved people, and provided all citizens with "equal protection under the laws," They have gotten their rights and are now equal to another person. Along with affirmative action was only originally being used for newly freed slaves but they are now using affirmative action for all races.

II. Part II

Moving onto my second Affirmative action gives the minority population opportunities while taking away rights and opportunities in the majority population. Originally after the civil war people were still trying to find way to make the newly freed slaves have equal rights. Some people in the Republican party thought that if they gave the newly freed slaves some rights that the normal population didnt get would help them get on track and try to live a normal life. Many believed that as new citizens of the united states including the newly freed slaves should have the same protection and preveliges and legal remedies as all other citizens but nothing more. They thought that special relief laws were constitutional and unnecessary. When the republicans wanted to get affirmative action involved they had the idea that it would help the minority but mostly newly freed slaves have rights. Unfortunately years later people are using affirmative action to sometimes favor the minority groups instead of the overall population. In Regents of the University of California V Bakke The medical school of The University of California had two different admissions programs. One was where the candidates must have above a 2.5 GPA or will be rejected. Although they had a second admission choice at the time. In 1973 and 1974 special admissions program where applicants that had a Grade point average under a 2.5 GPA, the applicant would be asked if they would liked to be considered a "economically and/or educationally disadvantaged" applicant and a member of a "minority group" which included (African americans, Chicanos and hispanics along with Asians and Indians). If an applicant was found to be “disadvantaged” then they would be evaluated in a very similar method. Although the special applicants did not have to meet the requirement to have a GPA above 2.5 they were not

compared to other applicants who had to have a GPA higher than 2.5 In the case of the Respondent he applied to Davis and was a white male and applied in both years of 1973 and 1974. At the time there was NO Disadvantaged white students were admitted in the special program although many had applied to be admitted nobody was allowed in. Even though in 1973 the respondent scored a 468 out of 500 the first time he applied he was still rejected due to the fact that the school was only taking students that scored above a 470. Along with the fact that there were still 4 special admissions program slots still open but since he had turned in the application late in the year he was rejected. However in1974 the respondent applied once again except this time applied early in the year. Nonetheless the applicant was still rejected despite having an overall score of 549 out of 600. In both years the applicant was not put on the waiting list even though the special applicants with significantly lower scores were accepted immediately. Following his second rejection the Respondent filled this action in state court for mandatory, injunctive, and declaratory relief to compel his admission to Davis. He was stating that the special admissions program was disqualifying him because of his race. This meant violating the Equal Protection Clause of the Fourteenth Amendment, along with the provision of the California Constitution. The respondent filed this lawsuit in state court to enforce that he shall not be disqualified from participating in any federally subsidized program because of race or color under Section 601 of Title VI of the Civil Rights Act of 1964 states that ('no person shall on the ground of race or color be excluded from participating in any program receiving federal financial assistance.') The California Supreme Court ruled that the special admissions

program is clearly the overriding state interest of consolidating medical professionals and increasing the number of physicians willing to treat minority patients. Without providing any state constitutional or federal reason, the court found that petitioner's special admissions program violated the Equal Protection Clause. Because the petitioner failed to discharge his responsibility to show that the defendant would not have been accepted without the special program. This shows that in the special applications of 1973 and 1974 they favored the minority groups instead of the overall students; they took opportunities away from students due to their race.

In conclusion Affirmative action is not consistent with the 14 amendment in the United States constitution. Due to the reason being that admission committees look into race and may use it as a disadvantage or upper hand depending on the students' race along with, affirmative action gives the minority groups an upper hand of making it into universities instead of giving the whole student body opportunities. Affirmative action was originally used to help give the newly freed slaves an opportunity to live an equal life with equal rights. Although it was created in 1964, the modern world uses Affirmative action as a disadvantage and takes opportunities away from students.

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opportunities. Affirmative action was originally used to help give the newly freed slaves an opportunity to live an equal life with equal rights. Although it was created in 1964, the modern world uses Affirmative action as a disadvantage and takes opportunities away from students.

III. Part III

Affirmative action is a really common thing that can be found anywhere and everywhere at some point or time. In America, affirmative action was technically first created after the civil war to help with desegregation and it most definitely did that. But that was back then when we needed help because nobody wanted to do anything, especially the South. Now affirmative action has tried to help create such a level playing field that it has become unfair without realizing it. In reality, Affirmative action no longer fits into the norms of society because of how advanced we have become and we no longer need affirmative action in America.

Without a doubt, there is a lot of history behind affirmative action, but every time it was brought back, it slowly but surely disappeared because it would no longer fit in with the norms of society. 1 example would be the freedmen's bureau. The freedmen's bureau was created during the American reconstruction era to mainly help former slaves, but ended up helping some poor white men, jump back into society. It was the affirmative action of the reconstruction era. Slowly but surely former slaves and poor white men slithered their way into society and started to be able to fend for themselves. Once

that started to happen, the government started to back off on it, and then sharecropping became an issue. But sharecropping wasn't considered discrimination so the freedmen's bureau went away and the government turned away from it and began to work on other things. Another example could be when President Truman decided to step in and stop the racial discrimination that was happening in the military. What was happening was that the African American active duty members were forced to be at the bottom of the military pyramid. They had to cook, clean, and deal with very dangerous bombs rather than fighting for their country like they signed up for. Also fun fact, at the time that this was all happening, the military was the number 1 African American employer. So there must have been a lot of people who were just stuck and couldn't move up in the rankings just because they were African American. So when President Truman saw this he decided to take action into his own hands. He created the executive order label 9981 and personally made sure that the desegregation was happening. But once it started to happen and became consistent, President Truman and the rest of the present and future government moved away from that topic and never looked back which slowly caused affirmative action to go away since they were all being treated equally. A third example would be when President John F. Kennedy created executive order 10925 which banned all racial discrimination in the employment process. Just like the other examples, President Kennedy noticed that people weren't getting jobs just because of their skin color and decided he was going to step in. His executive order promised equal treatment and chances for everyone during the hiring process. But

unlike the other 2 examples, when his executive order started doing its magic and creating an equal playing field he died and wasn't able to continue helping. After President Kennedy was assassinated, the government tried to continue to help with desegregation in the workforce and one of those ways they tried to help is the last example of affirmative action returning and disappearing in this part of the argument. 1 last example would be when President Lyndon B. Johnson created executive order 11246 which completely prohibited all discrimination in the workforce no matter what section it was talking about, whether it was the hiring process or the firing process. The only big difference between President Kennedy's executive order and President Johnson's executive order was that President Johnson's executive order included everything and everyone in the workplace, including women and minorities which had never happened before. But once again, as big as it came it slowly left and the government quit focusing on it causing affirmative action to leave. In total, all of these examples came and slowly left and affirmative action came and left with it and that is exactly what is happening now with this case. Affirmative action came when it needed to be there and now it is leaving causing everything to be unfair to everyone. In the case, Grutter v. Bollinger the supreme court justice made the ruling that affirmative action would be officially gone in the next 6 years, so by 2028. So just like in the examples said before, affirmative action will come and go but this time it seems it has left before the deadline came. So in the end, the court case Grutter v. Bollinger would need to be overruled because the affirmative action that it has brung has already left years before the

deadline, basically meaning affirmative action no longer fits in with the norms of society.

IV. Part IIII

Affirmative action has nothing to do with equality and is barely based on equity which causes it to be unconstitutional. The 14th amendment was created just after the American civil war with the 13th and 15th amendments. The 14th amendment was and still is a big deal because it makes sure everyone gets equal rights, opportunities, and good treatment from others. So in other words, the 14th amendment was made to create and keep equality amongst the people of America. This goes without saying that violating the 14th amendment is a big deal and sadly that is what affirmative action is doing. While affirmative action has helped a lot of people it has also created discrimination and biased opinions in the workplace and schools over race. America runs on the "rob Peter to pay Paul" plan, which is when you have to take something away from someone, which leaves them at a disadvantage, in order to give that thing you just took to someone else. To put it into context, it means that all the opportunities given to the minority races of America were taken away from the majority races of America and were never given back which is extremely unfair and does not create equality at all. One instance of affirmative action being unfair is the court University of California v. Bakke. In the University of California v. Bakke court case, the big story was that the University of California was setting aside 16 places out of the hundred available places for the minority races of America. When they

went to court for their quota, the supreme court ruled that their quota is unconstitutional and that is entirely true. To set aside seats for the minority population just because they are a part of the minority population is a violation of the 14th amendment. Because the 14th amendment talks about equality, helping the minority population achieve their goals without helping the majority population is unfair and unconstitutional. And that is exactly what the University of California was doing before they had to go to court for it. Affirmative action also isn't fair because not one person is getting the same thing as the other. In universities, one person might be getting a free master's degree just because they are a part of the minority races of America while another person is drowning in student loan debt trying to get an associate's degree with no help because they are classified as the privileged race of America. This hypothetical example is so far away from the idea of equality that you wouldn't even be able to see it if you went back 10 steps.

So Affirmative action does not create as much equality as most people would think, instead it drives us further away from equality and more into discrimination and racism.

A. Subpart A

When looking at affirmative action and what it does, people realize that affirmative action is very similar to the idea of equity. Equity in education is defined as making sure that the equal opportunities given to everyone are adjusted to make room for students who might need extra help and attention. While equity does

great things it becomes unfair to people when using the idea of equity because everyone can get a different outcome in the workplace and schools. Creating equity in schools and the workplace is extremely hard since not everyone has the same ideas and goals to complete in their lives. Affirmative action, rather than making sure everyone is on the same level, helps people so that in the end, nobody has the same outcome and neither equity nor equality is present. Affirmative action allows students that don't have as many opportunities to get extra help to succeed and surpass the majority races of America just because they are a part of the minority races of America, which is very immoral. An example of how affirmative action would be okay and how it would not is this: It would be okay if all of the majority races in America were earning bachelor's degrees so affirmative action created it to where it was to help the minority races get bachelor's degrees as well. This would not be okay if all of the majority races of America were earning bachelor's degrees and affirmative action decided to help the minority races get master's degrees instead of bachelor's.

So really, in the end, as much as affirmative action has helped people in the past, it is still inconsistent with the 14th amendment because affirmative action doesn't have anything to do with equality, which is what the 14th amendment is about, and because affirmative action is similar to equity but does not give everyone the same outcome so it is considered unfair.

CONCLUSION

Our country is in one of our most divided states since the Civil War, and Affirmative action is only helping the divide get bigger. Affirmative action is causing the divide to get bigger because the amount of flaws that affirmative action has outweighs the amount of good it can do for society. So in conclusion, affirmative action violates and is inconsistent with the 14th amendment because affirmative action is now being used as a disadvantage due to the fact that the admission committee checks race and may use it as an advantage and disadvantage, Affirmative action gives the minority population opportunities while taking away rights and opportunities in the majority population, Affirmative action was first enforced in a society different from that of today, and Affirmative action has nothing to do with equality and is barely based on equity which causes it to be unconstitutional.

Prayer

For these reasons, we pray that the court overruled the lower court and ruled in favor of the petitioner.

Respectfully submitted,

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