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

ATLAS WYATT

Counsel of Record

Creekview High School

3201 Old Denton Road

Carrollton, Texas 75007

December 7th 2022

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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I. College applicants should all have a truly equal opportunity to show they are equipped for higher education, and any interpretation of the fourteenth amendment that is racially blind is ignorant to not only the amendments historical context, but the systemic racism following the abolition of slavery and the effect it still has on african-americans access to higher education and well-paying employment via governmental institutions.

A. The equal protection clause of the fourteenth amendment does not prohibit race conscious affirmative action, as a colorblind interpetation

of this amendment disregards the intent and historical context of it. Considering the amendment to not encourage supplementing the societal and civic gaps between people of color and white people is an outright anachronism. The remediation of the effects of slavery was a commonly discussed and widely disputed issue, and the Republican party leaned more towards advocation for it. The enactment of the Freedmens Bureau would not have been occured and the bureau would not have existed and flourished as it did under the fourteenth amendment if the intent behind it did not specifically regard people of color, and acknowledge that remediation would not be unjust or discriminatory. As representative charles summer said ¨somoene must take them

by the hand, not to support them, but to help them to that work which will support them. The intervention of the National Government is neccessary¨

B. This court established in *grutter* the importance of diversity in higher education, and affirmed the foundation of strict scrutiny as the standard of review for race conscious affirmative action. Under strict scrutiny, a policy must be narrowly tailored to serve a compelling governmental interest. Something we have learned over time as a society is that equality does not always seem or appear fair to those inherently advantaged. In this instance, to be truly equal, all parties must be put on the same footing, so they each have the same chance to reach their goals and desired

outcomes. The legislation passed in the 1860s creating the freedmens bureau and subsequent historically black colleges and universities directly reflects the compelling governmental interest at hand. Slavery may be well over, but its effects are not yet behind us. Of the 16.6 million total undergraduate students enrolled in the Fall of 2019, Black students made up 2.1 million students of the undergraduate population. Additionally, 29% of the Black population aged 25 to 29 held a bachelor's degree or higher, compared to 45% of the white population in the same age range. Opportunities for people of color in governmental institutions and higher education specifically have been few and far between.

II. The affirmation of people of color and the granting of opportunities historically withheld from them does not equate the refutation of opportunity for white people.

A. At the time of the 14th amendment´s ratification, slavery had only been abolished for 3 years. The framers were grappling with and attempting to remediate the effects of slavery then, and that is the intent behind the amendment. This is reflected by other legistlation passed in the time period, such founding of the freedmens bureau, and its duration exceeding the ratification of the 14th amendment. The equal protection clause would have not only permitted the use of affirmative action, it would have encouraged all actions to

remediate the effects of slvaery, jim crow, and subsequent systemic and cultural oppression. Grutter held that "Diversity in higher education is essential to harnessing that strength and preparing students for success in modern society."

B. Ideally, there will come a time in which these preferences are no longer needed to serve a compelling interest of the state. We as a society should, can, and have no reason not to advance past this need. However, that time has not yet come, and estimating in advance can counterproductive in that it sets a standard that no one could truly or accurately predict, such as the 25 year observation in *Grutter*. It is my contention that the question of these

legistalations longevity is not yet moot, as affirmed in *Bakke*.

III. And finally, it is unreasonable to ask a University with a student body of nearly 30,000, and nearly double the amount of applicants per year, to find a means outside of affirmative action to achieve their compelling governmental interest of diversifying aforementioned student body.

A. It was held in both bakke and grutter that while race conscious affirmative action that used rigid quotas might not be ideal, they acknowledged that there is often no more narrowly tailored and effective means of achieving the compelling governmental interest of diversity at hand. This is why it is unreasonable to anticipate todays case to be

held differently. The use of affirmative action still serves the compelling governmental purpose, and other means would unduly burden the university by creating exponentially more difficulty in dealing with the admissions process. Here today, no adequate and more narrowly tailored solution has been presented. All alternatives have either had no application based in reality, never demonstrated efficiency, or simply would only indirectly benefit people of color i.e. providing more assistance to lower income applicants. Democracy we live in was established and exists in such a way so that all may be represented. It was the framers intent and the ideal in *Brown* that education could be the very powerhouse of our democracy.

CONCLUSION

Respectfully submitted,

ATLAS WYATT

COUNSEL OF RECORD

CREEKVIEW HIGH SCHOOL

3201 Old Denton Road

Carrollton, Texas 75006

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