QUESTION PRESENTED

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

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FACTS

The 1978 case *Regents of the University of California v. Bakke* formally upheld affirmative action, and allowed race to be one of several factors in the college admissions process. Petitioner Students for Fair Admissions (SFFA) sued Harvard University and the University of North Carolina in 2014, citing violation of Title VI of the Civil Rights Act of 1964 and the 14th Amendment respectively. The Petitioner has stated that any consideration of race on the part of Universities violates the equal protection clause of the 14th amendment. In violating the 14th, the SFFA have accused both Universities of engaging in racial balancing, hampering the success of Asian-American applicants . Both colleges have openly acknowledged their use of a race conscious model in their admissions process, but argue that their process adheres to precedent of *Grutter v. Bollinger*. SFFA has asked the court to strike down *Grutter v. Bollinger*, and to change the law to ban the consideration of race in college admissions, arguing that the situation " satisfies every factor that this Court considers when deciding to overrule precedent." Both Harvard and UNC argue that *Grutter v. Bollinger* and *Regents of the University of California v. Bakke* should be thoroughly considered and upheld because of the necessary and compelling state interest of diversity in schools.

SUMMARY OF ARGUMENT

The text of both the 14th amendment and the Civil Rights Act of 1964 protect colleges' right to consider race in their admissions process because a compelling state interest standard for creating diversity in schools is satisfied.

In *Grutter v. Bollinger*, the court recognizes the holistic nature of the University of Michigan Law School application and acceptance process. This process, which has been adhered to by both Harvard and UNC has highlighted the difference between an automatic race based acceptance process, such as the one found in Gratz v. Bollinger and a process based on individuality and experience. Secondarily, affirmative action succeeds under the standard of strict scrutiny. Confined to admissions, and admissions alone, affirmative action maintains its promotion of a diverse environment without infringing on the individual rights and equal protections that the law affords. The compelling interest of the state lies in the product of the law: a diverse and heterogeneous society. The diverse classroom that Affirmative action creates provides citizens with the tools to interact and conflict with each other. This melding of communities strengthens and improves civic society. Compared to the vast and immeasurable usefulness of diversity, the injury to the plaintiffs in this case seems minimal

In addition to the numerous benefits for the community, the respondent argues that, as roughly 62% of the population values the systems of affirmative action, the

courts should take a different approach to the issue. By its nature, the court is countermajoritarian, and not fully capable of reflecting the values of the community it represents. As such, it should allow lower courts and colleges to design the complex framework of admissions.

ARGUMENT

Institutions of higher education can use race as one factor in the admissions process. The admissions process of Harvard and University of North Carolina (UNC) do not violate the 14th amendment or Title VI of the Civil Rights Act of 1964.

Precedent holds that universities can use race as one factor in the admissions process . This factor, like every other factor should be considered. Affirmative action is not a discriminatory practice, it is a race conscious remedy.

Neither Harvard nor University of North Carolina violate the 14th amendment. While affirmative action does treat people differently based upon aspects of who they are, it is a necessary action to combat the racism ingrained in our society and work to undo the segregation in America. In cases such as these, when a law is necessary to the betterment of society, but there are questions regarding specific legality of the law, the strict scrutiny test can be applied. More specifically, it is the standard we use to judge policies that discriminate by race. The affirmative action used in both these schools pass the strict scrutiny test because they have a compelling state interest, as well as the policy being narrowly tailored.

Upholding affirmative action at Harvard and UNC provides a compelling state interest of diversity. Diversity in schools promotes the growth and development of all students. Inclusion of other perspectives challenges preconceptions, and encourages critical thinking. This

improves communication within the community, improving the relationship between individuals as they enter into the workforce.

The affirmative action used at Harvard and UNC is narrowly tailored. The standard "narrowly tailored" is as follows: The law is written precisely to place as few restrictions as possible on first amendment liberties. In past cases, the Supreme Court has already established the boundaries and appropriate ways to carry out affirmative action. Similar to the case Grutter v Bollinger, UNC and Harvard look at race holistically, which was ruled constitutional by the court. In the case Gratz v Bollinger, University of Michigan uses a point based system, assigning different races different point values in the application system. The precedent that "holding seats", or reserving spots for certain races, is not allowed in the admissions process was set in 1978 in the case Regents of the University of California v. Bakke. In the Bakke case, UC Davis medical school had a quota for each race to fill, and once the top scorers of each race were selected and the quota was filled, other applicants of that same race would no longer be admitted. This was ruled to be unconstitutional because any racial quota system supported by the government violated the Civil Rights Act of 1964, and the rigid use of racial quotas as employed at the school violated the Equal Protection Clause of the Fourteenth Amendment. This was ruled as unconstitutional by the court because the points based system amounted to "holding seats" which is not allowed. Affirmative action is narrowly tailored to look at race as a part of the greater picture of individual applicants, and

specific guidelines are in place to ensure affirmative action stays narrowly tailored and does not become too broad as seen in the cases such as Bakke, in which race was clearly the only defining factor in admissions.

Additionally, it is our belief that to remain a function of the people, the Supreme Court should maintain a balance of upholding the desires of its community, while staying in line with the Constitution. Affirmative action is constitutional as it passes the strict scrutiny test. A recent article from Gallup entitled "Affirmative Action and Public Opinion"cites that over 60% of people are in support of affirmative action. This is a significant majority of people, showing an interest in the program across party lines. Most elections we have as of now are won by mere percentage points, and for affirmative action to have such a high level of support (60% in support compared to 40% not in support creating a difference of almost 20%) it is apparent that in order to avoid being countermajoritarian and support the people, the Supreme Court should rule in favor of Affirmative Action.

Now, let us consider the impact of Affirmative Action on the admissions process. Universities balance candidates for admission through a process called holistic review. According to the undergraduate admissions catalog of UNC, the university reviews applicants, "rigorously, holistically, and compassionately." In the process, numerous factors are weighed against one another so that no one facet of an applicant's identity is the deciding factor. In utilizing affirmative action, the current admission process protects the racial minority, but does not deal with exclusivity by considering more than just skin color. The current system has

a minimal negative impact on applicants as a whole, instead allowing protected classes a chance at economic and social growth.

Finally, if affirmative action is overruled at these institutions, the effects on society would be gravely devastating. Fewer minorities would be admitted into universities, lessening diversity, which as discussed above would diminish the overall learning environment. But the effects of eliminating affirmative action will stretch far beyond simply the quality of education. These effects would affect the workforce, and would have long lasting effects. Because less minorities would be going to university, less minorities would have jobs as doctors, lawyers, etc., creating a more segregated community with less minorities in these higher paying jobs. This was seen with proposition 209 in 1996. Nearly 25 years after California's ban on race consideration in university applications, Black student enrollment in CSU and UC schools continues to fall from roughly 8% to 4% since 1997, according to and EdSource investigation entitled, "Dropping affirmative action had huge impact on California's public universities." Clearly one can see how the effects of eliminating affirmative action would continue to snowball from here. The effects would spread to families, and the children of these families would grow up with lower incomes, and less opportunities, making it significantly more challenging for them to go to college, creating an inescapable cycle. Sandra Day O' Connor once said, "Society as a whole benefits immeasurably from a climate in which all persons, regardless of race or gender, may have the opportunity to earn respect, responsibility,

advancement and remuneration based on ability." Affirmative action has the ability to provide the citizens of the United States with this dignity.

CONCLUSION

For the foregoing reasons, this Court should reverse.

Respectfully submitted,

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