Nos. 20-1199 & 21-707

In The Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,
Petitioner,
v.
PRESIDENT & FELLOWS OF HARVARD COLLEGE,
Respondent.

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

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

BRIEF FOR THE LONANG INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

A. Does the "Show No Partiality" principle, grounded in the Law of Nature and affirmed by the Declaration of Independence, dictate the exclusive legal meaning of equality for the Fourteenth Amendment's Equal Protection Clause and Title VI's prohibition of discrimination in education, thereby mandating color-blindness in college admission programs?

B. Should this Court's racial equality jurisprudence in college programs as expressed in Regents of the University of California v. Bakke, 438 U.S. 265 (1978), Fisher v. University of Texas, 570 U.S. 297 (2013), Fisher v. University of Texas, 136 S. Ct. 2198 (2016), and Grutter v. Bollinger, 539 U.S. 306, 343 (2003), be abandoned in favor of the "Show No Partiality" principle?

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INTEREST OF THE AMICUS CURIAE[1]

The LONANG Institute is a Michigan-based, nonprofit and nonpartisan research and educational institute. Application of the "Laws of Nature and Nature's God" to contemporary legal disputes is its specialty. The "Laws of Nature and Nature's God" constitute the legal foundation of the civil governments established State by State and of the United States. The law was specifically adopted and referenced in the Declaration of Independence of 1776. It is enshrined into our civil laws, principles of equality, unalienable rights, and limited government by consent. See https://lonang.com/.

This same law also presupposes that any civil government, or branch thereof, must adhere to those principles, defend such rights on an equal basis, and exercise only that power textually given. Likewise, the Law of Nature affirms that the province of a judge is to declare the law, not to make it. As friend of the Court, the LONANG Institute offers insight into the legal implications of the Law of Nature and its integral legal meaning of "equality", embodying the "show no partiality" principle when applied to college admission and other programs, mandating only one racial or skin color criteria—color-blindness.

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[1] It is hereby certified that counsel for Petitioner and for Respondent have filed blanket consents to the filing of this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than *amicus curiae*, or their counsel made a monetary contribution to its preparation or submission.

Several of this Court's prior decisions run contrary to this principle and unconstitutionally embrace racial partiality.[2] Amicus illuminates the historic landscape, helping the Court to see the jurisprudential error of its ways and to resist the current temptation advocated by Respondents, to continue rejecting the bedrock meaning of equality upon which this nation was established.

SUMMARY OF ARGUMENT

When God created mankind, male and female, He created them in his own image.[3] Having stamped His image on every human being without regard to skin color, He purposed that they would be treated equally under law, because He is no respecter of persons and shows no partiality based on skin color, ethnicity or race in governing or judging.[4]

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[2] See Regents of the University of California v. Bakke, 438 U.S. 265 (1978), Grutter v. Bollinger, 539 U.S. 306, 343 (2003), Fisher v. University of Texas, 570 U.S. 297 (2013), and Fisher v. University of Texas, 136 S. Ct. 2198 (2016).

[3] "God said, 'Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.' So God created man in his own image, in the image of God created he him; male and female created he them." Genesis 1:26-27 (ESV).

[4] "You shall not pervert justice. You shall not show partiality." Deuteronomy 16:19 (ESV). "Partiality in judging is not good." Proverbs 24:23 (ESV). "So Peter opened his mouth and said: 'Truly I understand that God shows no partiality.'" Acts 10:34

The framers of the American Declaration of Independence adopted this meaning of equality when they declared the American People could be numbered among the nations of the earth according to "the Laws of Nature and of Nature's God."[5] The framers affirmed this preexisting, fixed, uniform, and universal law, and declared it to be the legal foundation of the states and nation.

They recognized the Law of Nature contained several legal principles. These fixed stars illuminate this nation's foundations. They include government by consent, unalienable rights, and the right to alter or abolish any civil government at the pleasure of the people. We speak here not of the nonsense of "penumbras" and "emanations," but of universal law.[6]

(ESV). "Of a truth I perceive that God is no respecter of persons." Acts 10:34 (KJV). If the written testimony of Moses and Peter is inadmissible, then nature itself teaches that we are all equally human. The Declaration declares this to be self-evident.

[5] "WHEN in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation." Declaration of Independence (1776).

[6] "The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. See Poe v. Ullman, 367 U.S. 497, 516-522, 81 S. Ct. 1752, 6 L.Ed.2d

Moreover, among those principles derived from the Law of Nature, which itself is but a codification of the Creator's legislative act of creating mankind, male and female, is the shining self-evident principle "that all men are created equal."[7] This principle of equality has but one meaning consonant with the Creator and the Law of Nature itself: "Show no partiality." As applied to college admission and other programs under the Constitution's Fourteenth Amendment and Title VI, it mandates color-blindness.

The drafters of the Constitution's Fourteenth Amendment, Section 1, likewise declared that no State shall "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." Its guarantee of equal protection of the laws was contained in every draft leading up to the final version of the Amendment. The desire to provide a firm constitutional basis for already-

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989 (1961) (dissenting opinion). Griswold v. Connecticut, 381 U.S. 479, 484, 85 S. Ct. 1678, 1681, 14 L. Ed. 2d 510 (1965).

[7] "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—-That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, . . . " Declaration of Independence (1776).

enacted civil rights legislation was also critical.[8] So too, the drafters of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., prohibited discrimination based on race in programs that receive federal financial assistance.[9]

Because our Creator is no respecter of persons and shows no partiality in the administration of His laws of nature, so too we, as a People, having built our constitutional house on that same law of nature as announced in our Declaration of Independence, have irrevocably bound our public officials and judges with an oath to follow the Constitution's mandate of equal protection. Congress has also bound federal funding educational recipients through Title VI, to a rule of racial nondiscrimination in education – a rule without legal exception.

The mandate applicable to civil government and to federal financial recipients is this: no person, regardless of race, ethnicity, or skin color, is entitled to be shown or accorded any partiality by the civil government, or by a federally funded educational institution. To build partiality into university admissions or other policy based on race or skin color, contravenes the Constitution and Title VI in the

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[8] Civil Rights Act of 1866, ch. 31, 14 Stat. 27, now in part 42 U.S.C. §§ 1981, 1982. See Jones v. Alfred H. Mayer Co., 392 U.S. 409, 422–37 (1968).

[9] "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C.A. § 2000d (West).

University of North Carolina case. It also violates the statutory bar of Title VI, as applied to Harvard University. More critically, admission or educational policy and programs articulating partiality favoring some and thereby necessarily disfavoring others, are a departure from the very foundations of equality grounded in the Law of Nature, being that law upon which this nation was irrevocably established.

Indeed, the Supreme Court's decisions in *Bakke, Grutte*r and *Fischer I and II*, likewise offend the statute's nondiscrimination clause, the Constitution's equal protection clause, the principle of equality embedded in the Law of Nature, the Law of Nature itself and, as such, the very foundations upon which this country's civil edifice are built. By introducing a different concept of equality, one based on purposeful and intentional race or skin color partiality in the administration of a college admission program, the Court has chosen a concept of equality foreign and antithetical to the rule of law.

Nor are the "new and improved" academic rationales the Court has relied upon to justify departure from the Law of Nature's concept of equality, compatible with our commitment to show no partiality or be no respecter of persons. Though these rationales appear to be new fruit, they are unacceptable rationales, because they are plucked from the old judicially planted tree of Plessy v. Ferguson, 163 U.S. 537 (1896). Then, it was "separate but equal." Now, it is "diverse but equal." Thereafter, according to Brown v. Bd. of Education, 347 U.S. 483 (1954), it was "separate is inherently unequal." Amicus urge this Court to follow in

Brown's footsteps and declare "diversity is inherently unequal."

"Diversity" must be subordinate to equality, not the other way around. Achieving legitimate diversity means achieving it through the equality principle, not in defiance thereof, or as an exception to equality. Respondent's diversity is inherently unequal. Diversity can never be a trump card on equality according to the Law of Nature.

The present effects of past discrimination do not modify the foundational concept of equality or set a new standard or exception to the rule. Neither the adoption of goals and timetables, nor a desire to establish a "critical mass" of students of one color in the classroom are meaningful legal principles or valid exceptions.

Creation of an academic class which mirrors the racial composition of the relevant community carries no legal weight. Demonstration of a compelling state interest and choosing the least restrictive means, are merely judicially created doctrines employed to justify the Court's rejection of equality on a case by case basis. The doctrine of "separate but equal" met its waterloo with the recognition that "separate is inherently unequal."[10]

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[10] "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan., 347 U.S. 483, 495, 74 S. Ct. 686, 692, 98 L. Ed. 873 (1954), supplement-ed sub nom. Brown v. Bd. of Educ. of Topeka, Kan., 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955).

So too here, the current judicial doctrine of "equality with partiality" must give way to "equality, not partiality."

No Court can impeach the principles upon which the nation was established. None of these predictable academic or judicially constructed rationales can modify the nation's legal and constitutional promissory note; that equality means showing no partiality.[11]

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[11] "[T]the judicial branch of the government has only one duty; to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former. All the court does, or can do, is to announce its considered judgment upon the question. The only power it has, if such it may be called, is the power of judgment. This court neither approves nor condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the Constitution; and, having done that, its duty ends." United States v. Butler, 297 U.S. 1, 62-63 (1936).

ARGUMENT

I. EQUALITY MEANS "SHOW NO PARTIALITY".

A. The "Show No Partiality" Principle Is Part Of The Law of Nature, As Affirmed By The Declaration Of Independence And, Therefore, Dictates The Exclusive Legal Meaning of Equality.

1. We Are All Equally Human, Requiring Impartial, Equal Treatment.

The Declaration grounded all civil governmental power itself on the "laws of nature and of nature's God." It further declared this Law of Nature affirmed that every person is equally human, male and female, because they are made that way by the Creator. "God said, 'Let us make man in our image, after our likeness . . . .' So God created man in his own image, in the image of God created he him; male and female created he them." Genesis 1:26-27 (ESV). We are all equally human according to the Law of Nature.

Likewise, in administering justice, the Creator observes the rule of equality. This is expressed by a prohibition on showing partiality or being a "respecter of persons." Since He made us, we all stand before Him equally for judgment. Neither our race, nor skin color, merit a benefit or impose a burden. He observes that human beings should, likewise, follow His lead. "You shall not pervert justice. You shall not show partiality." Deuteronomy

16:19 (ESV). "Partiality in judging is not good." Proverbs 24:23 (ESV). "Truly I understand that God shows no partiality." Acts 10:34 (ESV). "Of a truth I perceive that God is no respecter of persons." Acts 10:34 (KJV).

2. Show No Partiality Is The Law Of Nature.

This is the Law of Nature of equality: "show no partiality." When the framers adopted the Declaration, they adopted the Law of Nature into our legal system. It became the residual law of the land, the foundation upon which the palladium of which all our liberties were to be secured from arbitrary civil government including its judicial branch.[12] The Declaration further affirmed the fixed stars of our Republic:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.–That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. . .

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[12] "WHEN in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation." Declaration of Independence (1776).

Remember that under the Declaration, the duty of the "governments instituted among men", is to secure the rights of the people according the rule of equality—a rule based upon humans being made equally in the image of their Maker.

3. *State Power Is Limited By The Law Of Nature's Mandate To Show No Partiality.*

The state governments that followed the Declaration each embraced these principles. In his introduction to the first report of Connecticut law cases, Jesse Root noted that the American system of law and jurisprudence had been purified of the special prerogatives of the English.[13] Beginning with the July 4, 1776, Declaration of Independence, America's statesmen endorsed the principle that the common good could be achieved only through a faithful adherence to the principle of legal equality of all people, and that it was the government's job to secure equality.

State after state adopted constitutional provisions that eliminated from their legal systems, the odious special privileges of the English king, his family and his friends. For example, even prior to the Declaration on June 12, 1776, the Virginia Constitution abolished "hereditary" access to legal and political privileges. The Delaware Constitution of September 11, 1776, eliminated special privileges that had been afforded the established church in

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[13] J. Root, "The Origin of Government and Laws in Connecticut, 1798" quoted in The Legal Mind In America (32 C. P. Miller ed., 1962).

England. The Maryland Constitution of November 3, 1776, similarly, abolished all titles of nobility and prohibited monopolies.

These several declarations against the granting of special privileges and immunities later, were summarized by one single declaration of equality before the law: "No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."[14]

Notwithstanding the failure of America's national leaders to reject racial inferiority as a justification for slavery, the people of Vermont prohibited slavery in their Constitution of 1777. In 1780, the people of Massachusetts abolished slavery by declaring in the first article of their new constitution: "All men are born free and equal, and have certain natural, essential, and unalienable rights which are the right of enjoying and defending their lives and liberties, that of acquiring, possessing, and protecting property."

Following the Civil War, Congress was prompted to enact the Civil Rights Act of 1866. That law provided that the new freedman was a citizen and, as such, entitled to the "same right . . . to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by

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[14] Art. I, Section 20, Oregon Constitution.

white citizens." Thereafter, Congress secured ratification of the Fourteenth Amendment's "equal protection" clause, to confirm its authority to prevent the states from denying the benefits of the common law to the newly freed slave class.

4. *Distinctions Based Upon "Race," "Color of Skin," Or "National Origin," Are Contrary To The Law Of Nature.*

The "equality principle" embraced by the Fourteenth Amendment was designed to prohibit the denial of ordinary legal rights enjoyed by all classes of people.[15] It rested upon the equality principle embodied in the Law of Nature, that all mankind are created equally human, and that no distinctions between one group of human beings or another can legitimately be made if those distinctions rest upon "race," "color of skin," or "national origin." By affirming the oneness of humanity in its Constitution, America brought its legal system into conformity with the goals expressed in the Declaration of Independence and the Law of Nature. The hallmark of the equality principle is equality of opportunity of all persons before the law. This principle, however, did not guarantee equal social, political, economic, educational or professional results.

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[15] Slaughter House Cases, 83 U.S. (16 Wall.) 36, 21 L.Ed. 394 (1873).

B. The Fourteenth Amendment's Equal Protection Clause And Title VI, Are Built Upon And Controlled By The "Show No Partiality" Principle, And In The Context Of Race, Skin Color And Ethnicity, Compel Color-Blindness In College Admissions And Academic Programs.

1. The Law of Nature And of The Land, Mandate Color-Blindness In College Admissions And Other Educational Programs.

The Fourteenth Amendment states, in part, that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." As applied to college admissions and other programs under the Constitution's Fourteenth Amendment and Title VI, the law mandates color-blindness in college admissions and other educational programs.

Examples of how colleges and universities, however, have relied upon "diversity" in the educational context as a tool in derogation of the color-blind principle, include "admissions, pipeline programs, recruitment and outreach and mentoring, tutoring, retention, and support programs."[16] This stands in stark contrast to the fact that the guarantee of equal protection was contained in every draft leading up to the final version of section 1 of the

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[16] *See* U.S. Dep't Of Educ.'s Office For Civ. Rights, Dear Colleague Letter On The Use Of Race In Postsecondary Student Admissions (Aug. 28, 2008), https://www2.ed.gov/about/offices/list/ocr/letters/raceadmissionpse.html (withdrawn on December 2, 2011, republished on July 3, 2018).

Amendment. The desire to provide a firm constitutional basis for already-enacted civil rights legislation was also critical.

So too, the drafters of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., prohibited discrimination based on race in programs that receive federal financial assistance. This Court has interpreted Title VI to prohibit "only those racial classifications that would violate the Equal Protection Clause" if employed by a state actor. Grutter v. Bollinger, 539 U.S. 306 (2003).

Because our Creator is no respecter of persons and shows no partiality in the administration of His Laws of Nature, so too we, as a People, having built our constitutional house on that same Law of Nature as announced in our Declaration of Independence, have irrevocably bound our public officials and judges with an oath to follow the Constitution's mandate of equal protection. Congress has also bound federal funding educational recipients through Title VI to a rule of racial nondiscrimination in education – a rule without legal exception.

The mandate applicable to government and to federal financial recipients is this: no person, regardless of race, ethnicity, or skin color, is entitled to be shown or accorded any partiality by the civil government or by a federally funded educational institution. Race based policies are a departure from the very foundations of equality grounded in the Laws of Nature, being that law upon which this nation was irrevocably established.

2. Race Based Criteria, Such As Diversity, Is Inherently Unequal.

Indeed, the Court itself articulated equality of opportunity in its cases including Brown v. Bd. of Education, 347 U.S. 483 (1954). There, it observed that educational "opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." But all this went out the window with the introduction of affirmative action, followed by diversity.

Plessy v. Ferguson, 163 U.S. 537 (1896), previously held "separate but equal" was constitutional. Today, "diverse but equal" is the rule. But according to Brown v. Bd. of Education, 347 U.S. 483 (1954), the rule became "separate is inherently unequal." Amicus urge this Court to follow in *Brown's* footsteps and declare "diversity is inherently unequal."

In essence, affirmative action and diversity mean that "people who control access to important social resources [should] offer preferential access to those resources for particular groups that they think need special treatment", especially racially defined groups.[17] However, affirmative action at least was

> always defended as a short term remedy, as a temporary expedient to be continued only until the favored groups can achieve ... what? Very few

[17] Schuck, *Affirmative Action: Past, Present, and Future*, 20 Yale L. & Policy Rev. 1, at 5 (2002).

> proponents have specified, even in principle, which conditions would trigger its termination. ... Still, many Americans worry about the indefinite continuation of a policy that raises the most difficult moral and political questions and that has always been rationalized as a temporary remedy.[18]

The intractability of affirmative action, and other race-based criteria employed by various public and private agencies, has not arisen by accident. Administrators in charge of race-based preferential programs in colleges and universities, embrace racial preference empowerment. But no reason actually justifies a departure from the principle of equality of opportunity under the law.

The Court too has been either naively or ideologically willing to give a free legal pass to higher education. With one eye closed to the rule of equality, it infamously speculated:

> We take the Law School at its word that it would "like nothing better than to find a race neutral admissions formula" and will terminate its race conscious admissions program as soon as practicable. . . . It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. . . . We expect

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[18] *Id.* at 84.

> that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.[19]

By speculating that "racial preferences will no longer be necessary" the Court transformed its purpose. It switched from being the Judicial Department, into a nine member Sociology Department. It switched from judicial review under law, into a sociological analysis about the hoped-for future of the University of Michigan's Law School.

3. *The Slave Trade Was Abolished After 20 Years, But The Diversity Trade Still Remains After 50 Years.*

The quoted language lacks reliance upon any legal, let alone any Constitutional principle. Recall, the Constitution permitted the slave trade to continue for 20 years.[20] It was, thereafter, promptly abolished by Congress in 1807. Yet, the Supreme Court has judicially legislated 50 years of racial preferences (25 years from *Bakke* and 25 years from *Grutter*) promising that someday, when "practical" and "no longer necessary," a university could possibly be persuaded of the "need" to eliminate its racial inequality in university programs.

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[19] Grutter v. Bollinger, 539 U.S. 306, 343 (2003).

[20] Article I, Section 9, Clause 1 states: "The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person."

Indeed. Here we are, nineteen years down that road, and how do things look? Is the end of all race conscious admissions programs clearly in sight? Is society ready now, in the age of Black Lives Matter, to shed the shackles of racial preferences? Or will this Court once again move backwards, parroting the popular incantation of "diversity?"

The aspiration of race neutrality and the realization of the plain meaning of being "created equal" will never occur, until this Court makes it so. As long as the Court continues to shrink from declaring that it must be so, it will never become so.

This Court has been perpetually hesitant to announce an explicitly color-blind standard. It has, instead, chosen to maintain *Plessy's* "separate but equal" exceptions to equality. The Court's acceptance of the spirit of the "separate but equal" standard under different and politically correct legal nomenclature still rejects equality itself. Harvard's claim to promote "diversity" and "race flexibility," or prior academic claims of achieving a "critical mass," "equity," or "racial parity" also reject equality. Generic calls for "affirmative action" are to the same effect.

The University of Texas was more creative in dodging the equality principle. The University began making admissions decisions based on an applicant's AI and his or her "Personal Achievement Index" (PAI). The PAI was a numerical score based on a "holistic review" of an application. Included in the score were the applicant's essays, leadership and work experience, extracurricular activities, service to

the community, and other "special characteristics" that might give the admissions committee insight into a student's background. Texas also claimed that race is only a "factor of a factor of a factor." Even so, Texas acknowledged that race was the only factor that appeared on the cover of every student application. 136 S. Ct. 2220.

What is really going on here? "Special characteristics?" "A factor of a factor of a factor?" "Holistic review?" Though it is initially tempting to treat such a list of "admission" factors as the academic equivalent of the technobabble describing the Rockwell Automation Retro Encabulator,[21] that treatment would only be half correct.

If we shine the spotlight of reproach upon admission factors of this ilk, it is easy to see they are created to identify factors which might serve as proxies for an applicant's race. The universities don't particularly care about any of these factors for their own sake. The factors serve a different purpose. The university keeps running each factor through a regression analysis, hoping to identify which will best serve as race proxies. They hope that one or more will result in a disproportionately higher racial sample of the group they seek to favor.

Yet, each of these high-sounding words and phrases representing admission "factors", annually

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[21] https://www.youtube.com/watch?v=RXJKdh1KZ0w&ab_channel=rlcarnes

repackaged and recycled by academics and admission directors, are simply variants of the unconstitutional fruit of *Plessy*. They are, for the most part, a pretext for the shameful rejection of the color-blind rule. Let us hope the Court does not invent any new "special characteristics" justifying continued rejection of the color-blind rule in its forthcoming decision.

C. This Court's Racial Equality Jurisprudence, As Expressed In *Plessy, Bakke, Grutter,* And *Fisher,* Are Unconstitutional Departures From The "Show No Partiality" Principle.

1. The Law Of Nature, Not The Case Law, Is The Only True Guide.

In Plessy v. Ferguson, 163 U.S. 537 (1896), this Court held that the "separate but equal" doctrine as applied to race was constitutionally valid, on the basis that it was a reasonable exercise of legislative power and had been enacted in good faith for the promotion of the public good. But ever since Brown v. Bd. of Education, 347 U.S. 483 (1954), *Plessy* has been rejected as a pariah among this Court's decisions.

Yet, it is ironic that the rationale in *Plessy* (a reasonable exercise of legislative power enacted in good faith for the public good) is conceptually indistinguishable from the rationale employed in *Bakke, Grutter* and *Fischer I*. Namely, the narrowly tailored use of race in admission decisions (a reasonable exercise of power) to further a compelling interest in obtaining the educational benefits that

flow from a diverse student body (for the public good), in which the university's good faith is presumed.

Indeed, the spirit of *Plessy* lives, but it has never been in good health - constantly requiring this Court to administer blood transfusions every 25 years to keep the corpse alive. *Grutter*, is a clear example of a judicial postmortem. The court nodded approvingly to a university admissions policy requiring officials "to look beyond grades and test scores to other criteria that are important," with particular reference to so-called "soft" variables.

It also keyed in on the university's claim to admit an "undefined 'meaningful number' necessary to achieve a genuinely diverse student body." 539 U.S., at 316, 335–336. The Court concluded such a policy "does not restrict the types of diversity contributions eligible for 'substantial weight' in the admissions process, but instead recognizes 'many possible bases for diversity admissions.'"

In other words, racial discrimination is perfectly fine, so long as it is clouded in obfuscating language and numerous flexible variables, so that no one outside of the university's admissions office can tell exactly what weight is given or denied, in what way, to which students. The reality is that admission officers "in the know," have numerical goals in mind not represented on paper, that prove to be the controlling factor in admissions. The deposition of university and law school admission officials discloses coached reliance on this criterion-less criteria.

2. The Court's Open Departure From The Declaration's Meaning Of Equality Is Morally Shocking.

William B. Allen, Ph.D. and former director of the U.S. Commission on Civil Rights, showed great insight when he realized the court had rejected the meaning of equality embodied in the Declaration of Independence after its ruling in Johnson v. Transportation Agency, 480 U.S. 616 (1987). He observed:

> Ten years ago it did not occur to me that the Supreme Court did not accept the principle of equality as expressed in the Declaration of Independence. The history of civil rights decisions since that time has proved that, indeed, the equality recognized by the Court is only a gift of government the result of human legislation rather than God given rights. . . . I was wrong ten years ago, because I did not foresee that the Court might accept the argument that white males have no civil rights the Constitution is bound to respect. Had the Court done as I anticipated, they would have found it necessary to define an equality which protected all alike rather than different persons differently.[22]

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[22] William B. Allen, *From Bakke to Johnson: A Decade of Supreme Court Drift*., U. S. Commission on Civil Rights. http://williambarclayallen.com/essays_and_misc/from_bakke_to_johnson.htm

The question is whether this trend is to be continued indefinitely, or will the Court finally pull the plug on *Plessy's* life support. If this trend continues, however, then truly equality, as a legal and constitutional concept, is dead. But why be duplicitous about the matter? If *Grutter* is to be affirmed, then plainly acknowledge that the lofty goals of the framers of a color-blind constitution and equality based in law, rather than outcomes, simply cannot stand when measured by the Sociology Department's judicial recognition of the harsh realities of social experience.

If the Court chooses to affirm *Grutter*, it will only be reaffirming the spirit of *Plessy*. Such a "race-based decision" will mean "separate but equal" still lives, (perhaps for 25 more years) all under the guise of applying a judicial standard of "strict scrutiny," which is no scrutiny at all.

CONCLUSION

Nearly sixty years ago, Dr. Martin Luther King, Jr. famously announced the standard for racial equality that motivated the nation for over a generation. "I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character." That dream is dead at Harvard and Michigan. That dream is dead at the University of North Carolina and Texas. The Dream is, or was at one time, the social and political standard of racial equality. It lines up perfectly with the legal standard of equality - namely, a color-blind constitution.

Amicus encourage the Court to affirm the Law of Nature, including its fixed concept of equality, mandating but one practice--to show no partiality. In this case, that law commands no partiality be shown regarding a student's race, skin color, or ethnicity in college admissions and college programs. The identification of these factors should be removed from every educational admission application.

To sustain the recycled exceptions to equality pressed upon the Court by the Respondents, only preserves the spirit of *Plessy* on judicial life support. Nevertheless, parroting high sounding academic contrivances like "diversity," "equity" and "race flexibility" will not bring national healing. It will only continue to empower higher educations' full-throated betrayal of a color-blind based education which deprives applicants and student of equal opportunity.

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