No. 20-1199

In the
Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,
Petitioner,

v.

PRESIDENT & FELLOWS OF HARVARD COLLEGE,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF *AMICUS CURIAE* OF THE FOUNDATION AGAINST INTOLERANCE & RACISM IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Foundation Against Intolerance & Racism (FAIR) is a nonpartisan, nonprofit organization dedicated to advancing civil rights and liberties for all Americans, and promoting a common culture based on fairness, understanding, and humanity. FAIR advocates for individuals who are threatened or persecuted for speech or who are held to a different set of rules based on their skin color, ancestry, or other immutable characteristics.

SUMMARY OF ARGUMENT

> *"[T]hough I am more closely connected and identified with one class of outraged, oppressed and enslaved people, I cannot allow myself to be insensible to the wrongs and sufferings of any part of the great family of man. I am not only an American slave, but a man, and as such, am bound to use my powers for the welfare of the whole human brotherhood."*
>
> -Frederick Douglass[2]

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[1] No counsel for a party authored this brief in whole or in part, and no person other than amicus and counsel made a monetary contribution to fund the preparation or submission of this brief. Petitioner and Respondents have filed a blanket consent with the Court.

[2] Letter from Frederick Douglass to William Lloyd Garrison, February 26, 1846, *The Liberator*, 27 March 1846; Reprinted in Philip Foner, ed., *Life and Writings of Frederick Douglass*, vol. 1, p. 138 (New York: International Publishers 1950).

Equality and individual rights have been the bedrock of our nation since its founding. Though often disregarded in horrible and violent ways, they remained ideals towards which this nation has continually strived. Substantial legal and social progress has been made when we honor those ideals as our North Star. It is doubtless that more must be done to achieve greater equality and fairness, while respecting our common humanity.

FAIR respectfully submits that the framework established in *Grutter v. Bollinger* is not the way forward. Permitting universities to prefer or discriminate against candidates based on their "race" reinforces the concept of race and disregards our most fundamental principles of equality and the primacy of individual rights.[3] By definition, applicants are not treated equally when the color of their skin, which they neither chose nor can change, can mean the difference between an offer and a rejection. Moreover, considering applicants' differently based on racial classification treats them as interchangeable members of identity groups rather than as individuals. Compliance with *Grutter* is therefore impossible because a university cannot evaluate a candidate as an individual when the "racial" group to which they are assigned is a decisive factor. Additionally, group preferences elevate

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[3] FAIR maintains that "race" is an artificial, arbitrary, and ill-defined concept. Throughout this brief, we will use terms such as "skin color" and "racial classification" instead, as we believe they are more accurate. Nevertheless, because the term "race" is used by universities and in civil rights jurisprudence, we use it in this brief when necessary.

institutional interests over individual rights and result in division, resentment, and dehumanization.

FAIR respectfully requests that the Court rule for the petitioner and reverse the decision of the Court of Appeals for the First Circuit.

ARGUMENT

In 1954, the Supreme Court quoted the *Slaughter-House Cases* in striking down the pernicious doctrine of "separate but equal":

> [The Fourteenth Amendment] ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the law. What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color?

Brown v. Board of Educ., 347 U.S. 483, 490, n.5 (1954).[4] Since then, the principle of equal treatment irrespective of skin color has been eroded to carve out

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[4] Although the Fourteenth Amendment was primarily designed to protect Americans classified as black, the Equal Protection guarantee applies to persons of all skin colors and racial classifications. *Board of Regents v. Bakke*, 438 U.S. 265, 291 (1978) (plurality opinion).

an exception for university admissions. Now, universities are permitted to prefer certain skin colors over others in admission decisions, as long as each candidate is evaluated "as an individual." *Grutter v. Bollinger*, 539 U.S. 306, 336-7 (2003). Harvard has assertedly based its admissions policy on the model sanctioned in *Grutter*, awarding some groups of applicants "tips" (elsewhere called "plusses") based on the skin color group in which they claim membership.

I. Principles of Equality Mandate Equal Treatment Irrespective of Skin Color

FAIR agrees that diversity along many dimensions is a desirable goal in institutions of higher education. However, employing group preferences to achieve that goal is inconsistent with the nation's first principle of equality.

A. Equality Among Individuals Is a Fundamental Principle of this Nation

Thomas Jefferson's proclamation that "all men are created equal" is forever repeated for a good reason: it succinctly describes what we most value and aspire to. The source of that self-evident truth was John Locke, whose political philosophy greatly influenced the Framers. *See* C. Bradley Thompson, *America's Revolutionary Mind* at 31-4 (Encounter Books 2019) (describing Locke's influence upon the United States as so significant that Locke's mind was coextensive with the minds of the founders). Locke's idea, which would eventually reach secular democracies around the globe, was that instead of being willed by God to be the subjects of a supreme monarch, persons by nature

possess equal inalienable rights. Each human is "equal one amongst another without subordination or objection" under the "eternal" and "universal" laws of nature. John Locke, *Second Treatise of Government* §§ 4-5, 135. That principle was implicitly embodied in our pre-1868 Constitution, which statesman John Bingham declared to be "based upon the equality of the human race." Gerard N. Magliocca, *The Father of the 14th Amendment*, New York Times (Sept. 17, 2013). Bingham, the architect of the Fourteenth Amendment, spoke movingly on this point in 1859:

> You will search in vain in the Constitution of the United States…for that word white, it is not there…. The omission of this word—this phrase of caste—from our national charter, was not accidental, but intentional…. Black men …helped to make the Constitution, as well as to achieve the independence of the country by the terrible trial of battle.

William Winslow Croskey, *Charles Fairman, "Legislative History," and the Constitutional Limitations on State Authority*, 22 Univ. of Chicago L. Rev. 18 (1954). Lincoln himself described equality between and among individuals as "the father of all moral principle." Abraham Lincoln, "Speech in Reply to Douglas at Chicago, Illinois," July 10, 1858, reproduced in Roy P. Basler, *Lincoln: His Speeches and Writings* at 402-3 (Da Capo Press, 2d ed. 2001). Upon ratification of the Fourteenth Amendment in 1868, the equality principle became an explicit part of the Constitution.

In the American mind, equality is neither a theory nor a hypothesis; it is a self-evident truth. It is

inarguable that this foundational truth has been dishonored during this nation's history. But it has consistently remained an ideal, a truth we have openly declared and reiterated despite, at times, disregarding it in catastrophic ways. The moral ideal of equality was at the core of the abolition movement, Justice Harlan's dissent in *Plessy*, the majority in *Brown*, the civil rights movement, and the civil rights laws enacted in the nineteenth and twentieth centuries. More recently, Justice Kennedy declared that "[t]he moral imperative of racial neutrality is the driving force of the Equal Protection Clause." *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 518 (1989) (Kennedy, J., concurring in part and in judgment). Neutrality *must* be an imperative of the liberal state, inasmuch as its legitimacy and stability depend upon its policies being "general, public, unalterable retroactively, and applied the same regardless of the individuals involved." Paul Starr, *Freedom's Power: The History and Promise of Liberalism* (Basic Books 2007); *see also* Friedrich A. Hayek, *Law, Legislation, and Liberty* vol. 2 at 97-8 (Univ. of Chicago Press 1976) (explaining the necessity of equal application of laws to the long-term survival of a free society).

B. Group Preferences Are Inconsistent With the Principle of Equality

Permitting institutions to evaluate candidates based on their skin color eviscerates the principle and promise of equality.[5] In the civil rights context, equality

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[5] Remedial measures to address identified past discrimination operate under different principles and premises than skin color

is the neutral treatment of individuals before the law, without regard to immutable traits and other arbitrary factors. *See Washington v. Davis*, 426 U.S. 229, 239 (1975) ("The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race."). The very notion of a "preference" is incompatible with equality, because by definition, a preference denotes inequality. When considering two alternatives, one cannot prefer one over the other unless they are unequal in some way in the decision maker's mind. Preferences are not selections made from indifference or indecision; they are expressions of partiality.

Equality and skin color preferences can coexist only if equality is redefined as the proportionate representation (or as close to it as possible) of identity groups. To borrow from Dr. Seuss, if the relevant population is ten percent Sneetches, then the institutions therein must also be ten percent Sneetches, or nearly so.[6] That model requires replacing moral equality with numerical equality. *See* Terry Eastland & William Bennett, *Counting by Race: Equality From the Founding Fathers to Bakke and Weber* (Basic Books 1979). Proportionate representation is certainly essential to the political process of electing leaders. But it has never been the

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preferences utilized to achieve diversity. *Cf. J.A. Croson*, *supra* at 509. This brief is limited to the latter and does not speak to the former.

[6] The obvious problem then becomes defining the relevant population, a question to which there is usually no satisfactory answer.

measure by which the right to equal treatment is assessed in this nation.[7]

Grutter effectively abandons the principle of equal treatment by removing the possibility of a remedy in all but the most egregious cases. As long as *Grutter* remains valid, universities will be immune from any claims of discrimination in the admissions process. Amorphous criteria such as "critical mass" and "plus" factors do not eliminate prohibited practices such as racial balancing and quotas; they simply push them beneath the surface. Absent an unlikely smoking gun, it is nearly impossible to determine whether the rejection of a highly-qualified candidate was motivated by an unspoken goal to achieve racial balancing or was the result of denying the candidate a "plus" factor.[8] *Grutter* thereby acts as an iron shield behind which prohibited discriminatory conduct can be concealed and recast as nothing more than granting (or withholding) a permissible "plus."

The "moral imperative of racial neutrality" is no imperative at all when vague exceptions are carved out and neutrality has been stripped of its meaning. The

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[7] Gross statistical disparities may sometimes be used to establish a prima facie case of discrimination under Title VII. *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-8 (1977). However, "Title VII imposes no requirement that a workforce mirror the general population," *id.*, and in any event, this is not a Title VII case. In Title VI cases, there is no private right of action based on claims of statistical disparities. *Alexander v. Sandoval*, 532 U.S. 275, 285-6 (2001).

[8] The secrecy of admissions deliberations, as discussed in Section III.A, makes discrimination even more difficult to discern.

only option that is both workable and consistent with equality principles is to preclude any consideration of "race" in university admissions.

II. Group Preferences Negate the Primacy of Individual Rights

Group preferences also discount this nation's commitment to individual rights. *Grutter* holds that universities may consider an applicant's "race" as long as they evaluate the applicant "as an individual." Such preferences cannot coexist with treating an applicant as an individual, however.

A. Individual Rights Are Foundational to Our Nation and System of Laws

The individual is "the primary unit of moral and political value." Thompson, *America's Revolutionary Mind*, *supra* at 23. Locke perceived that only an individual can exercise reason, apply will to actualize an outcome, and experience sensation and emotions. John Locke, *Essay Concerning Human Understanding* at II.xxvii 9-25. Accordingly, it is the individual-–and not the group—in which fundamental rights vest. That principle was enshrined in the Bill of Rights and the Fourteenth Amendment, which were adopted to protect the individual from abusive incursion by the state.

Courts have consistently reaffirmed the primacy of individual rights. As stated by this Court, "At the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class." *Miller v. Johnson*, 515 U. S. 900, 911 (1995) (internal quotation

marks omitted); *see Shelley v. Kraemer*, 334 U.S. 1, 22 (1948) ("The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual."). Constitutional rights belong to the individual and not the group. *Morales v. Shannon*, 366 F. Supp. 813, 822 (W.D. Tex. 1973), *aff'd in part, rev'd in part*, 516 F.2d 411 (1975). Thus, when determining who must be protected, the focus is on "fairness to individuals rather than fairness to classes." *Los Angeles v. Manhart*, 435 U.S. 702, 709 (1978); *see also International Union v. Johnson Controls, Inc.*, 886 F.2d 871 (7th Cir. 1989), *rev'd*, 499 U.S. 187 (emphasizing that civil rights laws require employers to "evaluate applicants and employees as individuals rather than as members of a group") (Easterbrook, J., dissenting).

B. Preferential Admissions Serve Groups Rather Than Individuals

When awarding a candidate a "plus" because of their skin color, a university is not preferring the individual. It is preferring a group. By definition, a "race" is a group. One is not Asian, black, white, or Latino uniquely or in isolation, but only because he or she is part of a vast collective that is defined (however fuzzily and arbitrarily) by common skin color or ancestry. An individual might consider her ancestral group important and influential upon her personal identity. But that does not convert "race" into an individual attribute, because "race" is a collective trait that cannot be possessed without reference to the group. Additionally, an individual may collaterally benefit from preferential group treatment. But if so, she received that benefit not because of her unique

individual attributes, but because of the "plus" that was assigned to the ancestral group to which she belongs. Thus, using racial preferences cannot result in an individualized review, as *Grutter* demands. It is impossible to evaluate a candidate as an individual when the group is the "tip" that can make the difference between an offer and a rejection.

The following hypotheticals illustrate the categorical difference between "plusses" based on skin color and "plusses" based on unique attributes. Suppose Harvard is deciding between two candidates, A and B, whom it considers equally qualified. Applicant B, however, is highly proficient at playing the bassoon, a unique ability that few possess. In that toss-up, Applicant B is admitted over the other candidate. Despite that, one would not say that Applicant B received an offer because of her membership in the "bassoon players group." That is because she was admitted not as a member of that theoretical group but because she possesses a unique individual quality that distinguishes her from other candidates. She could have been a master sculptor, published author, or other rare prodigy and would have qualified for the very same dispositive "plus." Harvard does not have a policy of preferring accomplished bassoon players *as a group* over others.

It does, however, have an explicit policy of preferring selected skin color groups over others. Again, suppose Harvard is evaluating two additional equally qualified candidates, C and D. Applicant C is a member of a skin color group slated for preferential treatment, while Applicant D is not. Applicant C

receives the tip and is offered admission over Applicant D. In this case, one *would* say that Applicant C was admitted as a consequence of the group, for she received the tip not because of any unique attribute but because of the group to which she belongs.

The objectionable nature of group preferences does not mean that group identity is wholly irrelevant. One's group identity can inform or affect their experiences and perspectives, which themselves are legitimate considerations in the application process. For example, an individual of Latino descent may have experienced hardship, joy, or other conditions relating to her ancestry that shaped her life in profound ways. Consideration of those hardships and joys and how they affected her would be appropriate. In fact, it would be a superior way of achieving the university's goals because it focuses on the elements that bring the experiential diversity universities presumably seek. Skin color, on the other hand, is a crude proxy for perspectives and experiences.

Granting a "plus" or "tip" based on nothing more than a checked "race group" box centers and serves the candidate's group rather than her individuality. *See Shelley*, *supra* at 22 ("Equal protection of the laws is not achieved through indiscriminate imposition of inequalities."). When the group is the determinative unit, "the individual disappears." Terry Eastland, *The Case Against Affirmative Action*, 34 Wm. & Mary L. Rev. 33, 46 (1992) (emphasis omitted).[9] What also

[9] This is notwithstanding the idea of "group differentiated rights" proposed by Canadian philosopher Will Kymlicka. Despite the

disappears is the fiction that group preferences have much at all to do with individualized evaluations in the university admissions process.

III. Group Preferences Benefit the Powerful Over the Powerless

Another principle embedded in our national character is the importance of shifting power from those who have much to those who have little. Legislation passed throughout the twentieth and twenty-first centuries demonstrates that commitment. That legislation includes the Civil Rights Act, Voting Rights Act, Americans With Disabilities Act, Age Discrimination in Employment Act, Occupational Safety and Health Act, Fair Housing Act, and Fair Credit Reporting Act. Each of those statutes transferred power from those who possess it in abundance to those who possess it least.

Group preferences in university admissions invert that principle, protecting the powerful over the vulnerable. Selective universities wield enormous power. They choose the students who are likely to be future leaders in government, corporations, and other influential institutions, shape those future leaders, and

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addition of the word "differentiated," Kymlicka indeed argues for collective rights. *See* Will Kymlicka, *Multicultural Citizenship* (Clarendon Press 1996); *Will Kymlicka*, The Canadian Encyclopedia (ed. 2015) ("Kymlicka believes that true equality requires different treatment for different groups.").

enjoy endowments in the billions of dollars.[10] Teenage college applicants have nowhere near that power, of course, but they do have something universities lack: the individual right to be free from discrimination. *Grutter*, however, largely stripped applicants of that right. The result is further consolidation of power within giant institutions and elevation of their interests over the rights of the individual.

The power differential is widened by the manner in which the admissions process is conducted. Deliberations are cloistered within university offices that are notoriously impenetrable, particularly in the case of private universities, such as Harvard, that are not subject to public records acts.[11] As Justice Alito aptly noted, applicants concerned about to what extent skin color played a role in their admission decision are left with little more than the dubious assurance of, "Trust us." *Fisher v. University of Texas*, 579 U.S. 365 (2016) (Alito, J., dissenting).[12]

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[10] Harvard's endowment is more than $53 billion, and the seven other Ivy League universities have endowments of many billions each.

[11] After some of its students requested access to their admissions records under FERPA, Yale Law School deleted all of its admissions evaluation data. Jed Finley, *Yale Law School Deletes Admission Data Following FERPA Request*, Yale Daily News (Mar. 24, 2015).

[12] It is worth noting that university administrators are shielded against the very discrimination they impose onto their applicants. Admissions officers are employees who are protected under Title VII. There is no recognized exception under Title VII that allows employers to engage in "preferential hiring" to achieve workforce

IV. Preferential Admissions Have Steep Costs

It is almost universally accepted that for any endeavor affecting the lives of a great many human beings, the benefits should outweigh the costs. Whether preferential admissions do that is far from clear.

It is a given that the competition for limited spaces at elite institutions is nothing if not fierce. In a just world, any student selected for admission should be confident that criteria were fair and evenly applied. Where immutable traits are added to the admissions mix, this perception of fairness may be cast into doubt.

FAIR understands that other *amici* will address in detail the costs of preferences, including disadvantages to persons of Asian descent. In this brief, FAIR will limit its discussion to the effects closely related to our pro-human mission: stigma, division, and the dehumanization inherent in evaluating individuals by their skin color.

A. Preferential Admissions Have a Stigmatizing Effect

Group preferences stigmatize individuals of African and Latino descent. Many individuals have described the demoralizing self-doubt they experienced from wondering whether they received their positions only as a means to fill a hidden quota. *See* Eastland, *The Case Against Affirmative Action*, *supra* at 41-3. They

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diversity. Thus, admissions officers can be fairly confident that skin color did not play a role in the university's decision to hire them. The students those officers evaluate are not extended that same luxury and security.

equally dread that others in their milieu consider them undeserving. *Id.* Such doubts and fears are not unreasonable when universities publicly advertise that individuals of African and Latino ancestry qualify for a special boost for no reason other than the color of their skin. Universities go even further, openly claiming that enrollment of students of black and Latino ancestry would be substantially lower without preferential treatment. In this case, Harvard has asserted that without group preferences, the number of admittees classified as black and Latino would drop by half. *Students For Fair Admissions, Inc. v. Harvard College*, 930 F.3d 157, 180 (1st Cir. 2020). Through those words and policies, Harvard and other universities with preferential admissions broadcast the message that some students cannot make it without their beneficence.

Preferential admissions place "a stamp of inferiority" upon students classified as black and Latino, regardless of whether they benefited from the preferences at all. In his dissent in *DeFunis v. Odegaard*, Justice Douglas wrote that the practice of preferential admissions

> creates suggestions of stigma and caste no less than a segregated classroom, and in the end it may produce that result despite its contrary intentions. One other assumption must be clearly disapproved; that blacks or browns cannot make it on their individual merit. That is a stamp of inferiority that a State is not permitted to place on any lawyer.

416 U.S. 313, 343 (1977) (Douglas, J. dissenting). This is a tragic result, for the canard of inferiority was precisely what the civil rights movement and the *Brown* Court rightly sought to eliminate.

B. Preferential Admissions Divide and Provoke Resentment

If continued long enough, group preferences have the potential to create a destabilizing backlash. The belief that one is being penalized for their skin color while others are benefiting can "fuel dangerous resentment and disturb social peace." Jeannie Suk Gersen, *The Uncomfortable Truth About Affirmative Action and Asian-Americans*, The New Yorker (Aug. 10, 2017). That resentment is experienced not only by the rejected but by the accepted who believe they were held to a higher standard and might continue to be through their four years of matriculation. Worse, preferences may "aggravate the white racism that affirmative action is supposed to counteract." Charles Krauthammer, *Quota by Threat*, The Washington Post (May 18, 1990).

Preferential admissions tend to divide the student body more than they unify it. Students are aware they were classified skin color during the admissions process. The resentment and self-doubt caused by that knowledge necessarily create tensions that are detrimental to on-campus cohesion. Psychologist Jonathan Haidt has extensively studied how humans behave within (and between) groups and why some groups achieve unity, cohesion, and happiness among their members. His first recommendation for group

unity is to deemphasize differences in skin color and ethnicity:

> Don't call attention to racial and ethnic differences; make them less relevant by ramping up similarity and celebrating the group's shared values and common identity…. There's nothing special about race. You can make people care less about race by drowning race differences in a sea of similarities, shared goals, and mutual interdependencies.

See Jonathan Haidt, *The Righteous Mind* at 275-6 (Random House 2012). By doing the opposite and emphasizing skin color and ethnic differences, universities that utilize preferences are fostering division before students even arrive for freshman orientation.

C. Group Preferences Incentivize Dishonesty and Result in Dehumanization

Not surprisingly, awarding advantages based on ill-defined racial classifications has led to fraud. A 2021 survey found that 34% of "white" applicants admitted to lying about their ancestry on their college applications.[13] *Percent of White College Applicants Who Claimed to Be a Racial Minority on Their Application*, Intelligent.com/Pollfish (July 2021). The vast majority did so for the express purpose of receiving preferential consideration. *Id.* Eighty-five percent of those dishonest

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[13] One might safely assume that many did not wish to admit to their duplicity, in which case the actual number of those who lied would be higher.

applicants received offers of admission. *Id.* While this behavior is clearly unethical, it cannot be called irrational. After all, those applicants might reason, if the university is bending the rules of equality by offering advantages to groups solely because of their skin color and nobody is at the door checking, why shouldn't they too bend the rules to take advantage of this substantial advantage? Clearly, an honor code is not working.[14]

There are also exaggerations and edge cases that may not rise to the level of outright falsehoods, but call into question the feasibility (and fairness) of awarding benefits based on ancestry. A candidate who discovers through DNA testing that she is five percent Native American could claim to be a member of that group, and there would be no principled basis upon which to accuse her of dissembling, for she *is* of Native American ancestry. A person whose parents are Spanish could check the "Hispanic/Latino" box, even though the Spanish are of European descent and are ethnically close to their neighboring Portuguese, who receive no preference. An individual with roots in southern Italy whose family lore speaks of an ancestor from northern Africa could also claim a preference.

None of those scenarios sits well or seems right. Yet, there is no way to ascertain the truth without resorting to dehumanizing methods of proof. To create a reliable system of preferences that would be difficult to game or

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[14] The prevalence of deception also indicates that universities with preferential admissions policies may not have increased the ethnic diversity of their student body quite as much as they believe.

stretch, a university would have to adopt abhorrent practices such as establishing "blood" thresholds, requiring applicants to undergo and produce DNA tests, or physically examining them to see if they "look" like the ethnicity they claim. The problem is apparent: The "very attempt to define with precision a beneficiary's qualifying racial characteristics is repugnant to our constitutional ideals." *Metro Broadcasting, Inc. v. Federal Commc'n Comm'n*, 49 U.S. 547, 633, n.1 (1990) (Kennedy, J., dissenting), *overruled by Adarand Constr., Inc. v. Pena*, 515 U.S. 200 (1995) (internal quotations omitted).

Of course, it is unlikely that a university would engage in any of those practices. The point is that the distastefulness of assessing an individual's "race" indicates the corresponding dehumanization inherent in using skin color to evaluate the academic attractiveness of individual human beings.

CONCLUSION

A vibrant and diverse student body is a laudable goal. But it does not follow that skin color preferences either can or should be the way to achieve it. Extending advantages to skin color groups upends this nation's foundational tenets of equality, the importance of individual rights, and the need to temper institutional power, while sacrificing our humanity and unity in the process. Fundamental principles formed over centuries through the democratic process and forged through the crucible of tyranny and oppression should not be abandoned so that universities can serve their institutional needs and goals.

The wound that remains from historical injustices will never heal if institutions continue to impose divisive racial classifications upon consecutive generations of youth. FAIR urges the Court to rule in favor of the petitioner and reverse the decision of the Court of Appeals for the First Circuit.

Respectfully submitted,

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