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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2012

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Suzanne Peters

*Petitioner,*

v.

University of Lexington at Triolo, et al.,

*Respondent.*

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**On Writ of Certiorari to the United States Supreme Court**

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**BRIEF FOR THE PETITIONER**

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September 16, 2012 32

Counsel for Petitioner

**QUESTIONS PRESENTED**

1. Whether the University of Lexington at Triolo’s use of race in undergraduate admissions is constitutional under this Court’s affirmative action jurisprudence; and
2. Whether this Court’s decisions interpreting the Equal Protection Clause of the Fourteenth Amendment, including *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) and *Grutter v. Bollinger*, 539 U.S. 306 (2003), regarding affirmative action should be overturned by this Court.

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# STATEMENT OF THE CASE

In 2008, Lexington resident Suzanne Peters (“Peters”) applied for undergraduate admission to the University of Lexington at Triolo (“LX-Triolo” or “the University”) a well-regarded and highly selective public university. The Lexington Top Ten Percent Law, H.B. 588, 1997 Leg. (Lexington 1997), guarantees admission to an LX school to any Lexington resident in the top ten percent of a public or reporting private high school class at the time of their application. *Peters v. Univ. of Lexington at Triolo* (*Peters I*), 376 F.4d 1, 4 (W.D. Lexington 2009). From 1997–2003 LX-Triolo relied solely on the Law to increase minority enrollment, and minority enrollment did steadily increase over those years. Following this Court’s ruling in *Grutter v. Bollinger*, 539 U.S. 306 (2003), the University conducted a study and determined it lacked “critical mass” for minority students to meaningfully contribute. Modeled on the Michigan Law School policy approved in *Grutter*, the University implemented new admissions policies. For Lexington residents not in the top ten percent of their high school class at the time of their application, LX-Triolo now employs a multi-tiered admissions policy. *Peters I*, 376 F.4d 1 app. Applicants are assigned an Academic Index (“AI”) score based on their standardized test scores and high school class rank, and any applicant with a high enough AI score can be admitted solely based on that score, while an AI score below a certain level results in a presumptive denial of admission. *Id.* For those applicants with middling AI scores, their application is considered further and they are assigned a Personal Achievement Index (“PAI”) score. *Id.* The PAI score is made up of three elements, two essays and a personal achievement score (“PAS”). The PAS is itself comprised of six elements, one of which, special circumstances, considers four elements, one of which is the race of the applicant. *Id.* Peters was considered under the admissions policy for Lexington residents outside the top ten percent of their high school class and was denied admission.

# SUMMARY OF ARGUMENT

The LX-Triolo admissions policy is unconstitutional under this Court’s current affirmative action admissions precedent because of the presence of the Top Ten Percent Law and the use of a *Grutter*-like consideration of race simultaneously. *Grutter* requires schools to consider race-neutral alternatives before embarking on classifications based on race, *Grutter*, 539 U.S. at 339, and by superimposing a race-conscious admissions policy on top of a race-neutral alternative, LX-Triolo has done indirectly what it cannot do directly, engage in unconstitutional racial balancing. Furthermore, the exacting standard of review of strict scrutiny employed in cases involving racial classifications requires such classifications, in the extraordinary circumstances in which they can be used, to have more than a minimal effect. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 734 (2007). The fact that race is considered for less than 10% of LX-Triolo applicants indicates it is not essential to the achievement of any compelling interest and is thus unconstitutional.

Furthermore, the structure of this Court’s prior precedent concerning admissions affirmative action, including *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), and *Grutter*, while necessary at the time it was fashioned, is no longer necessary and can safely be discarded. Attaining diversity in higher education is no longer a compelling interest in light of the decisive actions being taken by state legislatures to craft their own approaches to increasing minority enrollment in public universities, hence use of racial classifications is no longer necessary. Problems with the *Bakke-Grutter* structure have been apparent from the beginning, and now that legislatures have picked up the mantle of pressing forward to achieve the benefits of minority participation in the higher education classroom, the judiciary can step aside and retire one more racial classification.

# ARGUMENT

This Court and this country’s history with affirmative action in college admissions has seen many twists and turns from the opinions in *Bakke* to the most recent statement of an acceptable use of race as a factor in admissions decisions in *Grutter*. In each instance this Court has confronted an ever-changing landscape of admissions programs and other factors and has not hesitated to take this context into account in squaring the use of race with the Equal Protection Clause of the Fourteenth Amendment. *See* U.S. Const. amend XVI, § 1 (“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”). For the first time, this Court must squarely address the effect of a percentage plan like the Lexington Top Ten Percent Law on the use of race in undergraduate admissions. *See* H.B. 588, 1997 Leg. (Lexington 1997). The presence of a percentage plan makes additional consideration of race in admissions under the parameters the Court approved in *Grutter* racial balancing in violation of the Equal Protection Clause. Not only is the consideration of race unconstitutional when used despite the passage of a percentage plan, but this case presents an opportunity for this Court to overrule outdated precedent in *Bakke* and *Grutter* and fashion a structure honest to the principles of the Fourteenth Amendment in the Twenty-First Century.

## I. The LX-Triolo Admissions Policy Is Unconstitutional under Current Precedent

### A. Under Current Precedent, the LX-Triolo Policy Serves a Compelling Interest

By taking race into account in making admissions decisions, LX-Triolo, a state agency, is classifying individuals on the basis of race. “Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943). Nevertheless, racial classifications are permissible in extreme circumstances. The standard of review of such classifications is clear—“all racial classifications imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests.” *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995). In *Grutter* this Court clearly established that diversity in education is a compelling interest, *see Grutter*, 539 U.S. at 328, and LX-Triolo has been clear that its purpose in considering race in admissions is to achieve the “critical mass” of minority students to reap the benefits of diversity in higher education. *Peters I*, 376 F.4d at 4. It is clear that under this Court’s current precedent, the first element of strict scrutiny has been met, so the inquiry must turn to the second element, whether the LX-Triolo admissions program is narrowly tailored to achieve the diversity it seeks.

### B. The LX-Triolo Policy Is Not Narrowly Tailored to Achieve that Interest

While there was room for debate about the precise meanings of the diverse opinions in *Bakke*, this Court made a definite statement of how race could be used in higher education admissions in *Gratz v. Bollinger*, 539 U.S. 244 (2003), and especially its companion *Grutter*. Admittedly, the system employed by the University of Lexington (“LX”) is consistent in almost every way with the system employed by the University of Michigan School of Law (“Law School”) approved by the *Grutter* Court—indeed, LX designed its policy specifically “[t]o conform with the *Grutter* decision.” *Peters I*, 376 F.4d at 2. The LX system sets no specific targets for minority admissions, it does not establish anything that could be considered a quota for minorities, it causes no undue harm to members of any racial group, it does not award mechanical, predetermined bonuses based on an applicant’s race, it provides individualized review of each applicant’s file, and the requirement of a time limitation is satisfied by its provision for periodic review to assess whether consideration of race is still necessary to achieve “critical mass” of minority students. *See Grutter*, 539 U.S. at 334–43 (laying out elements for an admissions policy that takes race into account to be narrowly tailored); *Peters I*, 376 F.4d at 2–3 (describing the LX admissions system).

There is one critical way, however, in which the LX system differs from the system approved in *Grutter*, and that difference makes the LX system unconstitutional under this Court’s prior affirmative action precedent: the LX system fails to consider race-neutral alternatives, specifically the Lexington Top Ten Percent Law. “Narrow tailoring does, however, require serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks.” *Grutter*, 539 U.S. at 339. The Top Ten Percent Law is certainly workable. “Under HB 588, minority enrollment levels have improved. The entering freshman class of 2004 . . . was 4.5 percent African-American and 16.9 percent Hispanic, compared to 2.7 percent and 12.6 percent respectively seven years earlier.” *Peters I*, 376 F.4d at 2. The Top Ten Percent Law guarantees admission to any high school senior, regardless of race, in the top ten percent of their class at the time of their application, therefore it is race-neutral as well.

The numbers paint a clear picture. The Top Ten Percent Law is achieving diversity in an unimpeachably fair manner, based on competition among high school students to earn grades in the top ten percent of their class. “Fairness in individual competition for opportunities, especially those provided by the State, is a widely cherished American ethic.” *Bakke*, 438 U.S. at 319 n.53. The Top Ten Percent Law is also completely transparent, in stark contrast to the opacity of the LX admissions system as well as those endorsed by the Court at the Law School and the Harvard plan lauded in *Bakke*. In the Court-endorsed plans, admissions counselors are in some ways tethered to objective data, high school GPA and entrance exam scores, but in other ways are given free rein to assign values to so-called “soft” variables, some of which are irretrievably subjective, such as challenges overcome or athletic or artistic talent. The process under the Top Ten Percent Law is clean and simple, with students of any background knowing exactly what they need to do to guarantee they will have the opportunity for a high-quality college education at LX-Triolo, rather than pursuing a bevy of extracurriculars or honing writing samples to try to catch the eye of an inscrutable admissions counselor.

A prominent objection to the characterization of percentage plans as race-neutral alternatives came from Justice Ginsburg in her dissent in *Gratz*. Justice Ginsburg’s first contention was that percentage plans are not, in fact, race-neutral, because they are adopted with the goal of improving minority enrollment. *Gratz*, 539 U.S. at 303 n.10 (Ginsburg, J., dissenting). Whatever the motives underlying the adoption of percentage plans may be, that does not change the fact that under the Lexington Top Ten Percent Law, race is in no way considered in granting admission to LX schools for those in the top ten percent of their class. As such, the law cannot properly be labeled anything but race-neutral. Justice Ginsburg’s next concern was that percentage plans “depend for their effectiveness on continued racial segregation at the secondary school level.” *Id.* Again, this is simply not true. Rather than depend on segregation, the Top Ten Percent Law aids in breaking down its last vestiges, bringing high-achieving young people of all backgrounds together at college.

Next, Justice Ginsburg was concerned that percentage plans create “perverse incentives” whereby parents would elect to keep their children in lower-performing schools, trading quality of high school education for an easier path to a top class rank and guaranteed admission to a state university. *Id.* While it is all well and good to speculate about how the Lexington Top Ten Percent Law might be one more star in the constellation of factors, logical or illogical, that influence a parent’s choice regarding their child’s education, the only incentive definitely created by the Law is the incentive for a student to get into the top ten percent of their high school class, and certainly there is nothing perverse about fostering healthy competition among students and rewarding hard-earned achievement. Finally, Justice Ginsburg noted that while percentage plans could boost the number of minority students at state undergraduate programs, they had no effect on graduate or professional school enrollment. *Id.* Again, the Lexington Top Ten Percent Law has steadily increased minority enrollment at LX-Triolo, and it is does not require great imagination to project that as more minority students enroll in, and successfully complete, undergraduate programs, more minority students will consider, become qualified for, apply for, and gain admission to graduate or professional programs.

The lower courts in this case raised further concerns about the sufficiency of the Top Ten Percent Law as a race-neutral alternative to consideration of race in admissions. Both courts centered on the fact that after seven years of just using the Top Ten Percent Law, LX-Triolo conducted a study and found minority enrollment and participation short of critical mass, hence the Law itself is not a sufficient race-neutral alternative. *Peters I*, 376 F.4d at 9; *Peters v. Univ. of Lexington at Triolo* (*Peters II*), 1071 F.4d 1, 5 (12th Cir. 2011). This, however, is exactly the point at which prior precedent makes the LX-Triolo system unconstitutional. LX-Triolo had a race-neutral mechanism in place that steadily increased minority enrollment over the seven years it worked on its own, but that was not good enough for school administrators. They found minorities lacking in several classes and programs and superimposed a *Grutter*-like admissions system in order to generate additional minority enrollment, especially in areas of special concern.

This Court has repeatedly stated that this kind of racial balancing is patently unconstitutional. *See Bakke*, 438 U.S. at 307 (“If petitioner’s purpose is to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose . . . is discrimination for its own sake. This the Constitution forbids.”); *Grutter*, 539 U.S. at 330 (quoting *Bakke* declaring outright racial balancing unconstitutional). While LX-Triolo has not embraced a strict racial quota in form, setting a number of minority enrollees for each class and taking applications until those spots are filled, the combination of the Top Ten Percent Law and the additional consideration of race in the application process approaches such a system in function. Now is the time to end the charade. Instead of adding a level of race-based consideration to a race-neutral alternative and pretending to be surprised at the happy accident of exactly the desired number of minority students in the university as a whole and in each program individually, we should acknowledge this system for what it really is, racial balancing rejected outright in *Bakke* and again in every admissions case since then.

The Twelfth Circuit majority conceded that the Top Ten Percent Law “appears to succeed in its central purpose of increasing minority enrollment,” but it concluded the Law “is at best a blunt tool for securing the educational benefits that diversity is intended to achieve.” *Peters II*, 1071 F.4d at 5. That the Law could be considered a blunt tool reveals the true unconstitutional aims of the LX admissions program. The Law steadily increased minority enrollment when it was the only driver of such enrollment, and even with the consideration of race in non-Top Ten admissions, the Law is still responsible for the vast majority of minority students at LX-Triolo. *Id.* at 3. Viewed in that light, it is a very effective tool. The true goal of the LX-Triolo admissions program, however, is not just increased minority enrollment but perfect racial balance across classes and programs, and unfortunately the results generated by the Law fall short of that lofty, and unconstitutional, goal. It is only in this light that the Law begins to look like a blunt instrument.

### C. Consideration of Race in LX-Triolo Admissions Plays So Small a Role as to be Constitutionally Defective

The LX-Triolo admissions program also runs afoul of this Court’s precedent because “the minimal impact” of LX-Triolo’s use of race in admissions “casts doubt on the necessity of using racial classifications.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 734 (2007). As the District Court pointed out in *Peters I*, “LX considers race in its admissions process as a factor of a factor of a factor of a factor.” *Peters I*, 376 F.4d at 7. The Twelfth Circuit addressed just how many applicants of the 16,000 total may have their race taken into account: “LX’s *Grutter* plan can only possibly influence the review of approximately 1,200 admitted students’ applications.” *Peters II*, 1071 F.4d at 3. In all likelihood, however, the number is even less than 1,200 because “[s]ome applicants’ [Academic Index, based solely on standardized test scores and high school class rank] scores are high enough that they receive admission based on that score alone.” *Peters I*, 376 F.4d 1 app. at 1. Thus, less than 1,200 of 16,000 (approximately 7%) potential applicants even reach the stage of the admissions process at which their race is considered.

Under the LX-Triolo admissions policy, an applicant’s race, a factor beyond the control of any applicant, plays a minor but potentially decisive role in the school’s admissions decision. This may seem so small as to be immaterial, but given the odious nature of racial classifications, the standard of review of strict scrutiny ensures that if individuals are to be evaluated based on their race, use of that factor must be essential to the compelling interest sought to be achieved. *Parents Involved*, 551 U.S. at 734. The Law School admissions process in *Grutter* met that burden—in order to accommodate the compelling interest in diversity among law students, every applicant was evaluated individually and race was considered as a potential plus for every applicant. The LX-Triolo policy, however, creates a situation in which potentially less than 7% of applicants have their race considered, not nearly enough to be considered essential to attain what this Court has recognized as a compelling interest.

The district court lamented that this argument “attempts to force LX into an impossible catch-22,” because a policy must have more than a minimal effect while also remaining narrowly tailored. *Peters I*, 376 F.4d at 8. That is certainly a legitimate concern, and it is one of many corners the current structure of the law forces both applicants and schools into, one more reason why perhaps the time has come to tear down the current structure and start fresh, see Part II, *infra*.

## II. This Court’s Current Precedent Approving Consideration of Race in University Admissions Should be Overruled

Even if LX-Triolo’s policy of using a system based on *Grutter* to consider race in addition to a well-functioning race-neutral alternative method of attaining diversity in higher education is constitutional under this Court’s precedent, that entire structure is questionable in today’s society and the shaky structure that has been erected from *Bakke* on should be dismantled.

### A. Legal Concerns with the Current Structure: Attaining Student Body Diversity in Higher Education is No Longer a Compelling Interest

*Grutter* finally clarified that attaining the benefits of higher diversity in higher education is a compelling interest, an end worthy of use of a racial classification as a means. *Grutter*, 539 U.S. at 328 (“Today we hold that the Law School has a compelling interest in attaining a diverse student body.”). In today’s society, however, attaining diversity in higher education is no longer a compelling interest. The benefits of including deserving candidates from all backgrounds in the same classroom have been exhaustively catalogued, and doubtless it should be the mission of every university to attain diversity of experience among its classes. Given the troubling legacy of discrimination based on race in this country, *see, e.g.*, *Bakke*, 438 U.S. at 387–96 (Marshall, J., dissenting), there was a time when attaining diversity was truly a compelling interest, and it was truly one of the rare areas in which use of racial classifications could be considered. That was the landscape that the *Bakke* Court confronted, and while the many opinions in that case fostered some confusion, it was clear that universities were not foreclosed from considering race in admissions policies, with tacit approval given to the Harvard plan. *See id.* at 316–20 (opinion of Powell, J., announcing judgment of the court) (discussing the Harvard plan and reversing the judgment of the court below that California universities could not consider race in any way). Only twenty years after *Brown* and fifteen years after the Civil Rights Act, it was a remarkable stance that would open the door for colleges to tailor programs to increase minority enrollment and open the door of opportunity in a changing America to people of all colors.

From the very beginning of the discussion of post-slavery racial issues in this country, members of the Supreme Court, some of the brightest and most forward-thinking minds of their time, looked forward to a day when race, so long at the forefront of this country’s consciousness, could be relegated to irrelevance. *See* *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting) (“Our Constitution is color-bind, and neither knows nor tolerates classes among its citizens.”). Some of these hopeful judges were certain this would happen in their lifetime. “I yield to no one in my earnest hope that the time will come when an ‘affirmative action’ program is unnecessary and is, in truth, only a relic of the past. I would hope that we could reach this stage within a decade at the most.” *Bakke*, 438 U.S. at 403 (opinion of Blackmun, J.). In many ways that optimism has not dimmed. *See Grutter*, 539 U.S. at 346 (“[O]ne may hope, but not firmly forecast, that over the next generation’s span, progress toward nondiscrimination and genuinely equal opportunity will make it safe to sunset affirmative action.”). It has been thirty-four years since the *Bakke* decision, and though it may feel wrong or naïve to say out loud, this country has moved past many of its racial issues, at least as far as college admissions are concerned. Governors no longer block schoolhouse doors, and the people of many states, through their elected representatives, have seen fit to approve colorblind admissions policies like percentage plans knowing full well that such laws will rapidly increase minority admission to state universities and in many cases intending that result.

Members of this Court have also acknowledged that the judiciary is ill-suited to creating solutions in the area of college admissions. *See Bakke*, 438 U.S. at 405 (opinion of Blackmun, J.) (“The judiciary . . . is ill-equipped and poorly trained [to address programs of admission to institutions of higher learning].”). While those same observations included the suggestion that college administrators were best-suited to create those solutions, in today’s landscape another qualified party has in fact stepped forward. The people of several states, including California and Michigan, significant locations in the admissions affirmative action story, have chosen to bar affirmative action by their state universities. *See* Cal. Const. art. I, § 31(a); Mich. Const. art I, § 26. The people have clearly spoken in other states, including Lexington, that they would like percentage plans to be the driver of minority admissions in their states. *See, e.g.*, H.B. 588, 1997 Leg. (Lexington 1997). In the aftermath of *Brown* it is clear why the judiciary wanted to get involved, enforcing the Constitution when other branches were unable or unwilling to act first, and their bold actions led to today’s progressing society. Today the people, through their elected representatives in state legislatures, are clearly better-suited to making such decisions about their state universities than unelected federal judges, and it is thus appropriate for the federal judiciary to step aside now, laying down a mantle they carried as best they could, but were never meant to carry in the first place. Attaining diversity in higher education is no longer a compelling interest worthy of the extreme step of judicially sanctioned racial classification.

### B. Practical Problems with the Current Structure: It is Riddled with Contradictions and Can Finally Be Set Aside

While the above reasons lay out why the legal standard used to evaluate admissions affirmative action no longer applies, practical reasons abound. With the best of intentions, a flawed structure was raised to address a pervasive problem. As time has progressed, those flaws have metastasized into outright contradictions, and the costs of keeping the structure up now outweigh the benefits. These contradictions have been pointed out over the years, and while individually they have been mere whispers behind the back of a larger message, now taken together they speak clearly in favor of starting anew.

The first such contradiction was addressed in Part I, *supra*—since *Bakke* it has been a requirement that racial classifications be narrowly tailored, *see Bakke*, 438 U.S. at 291 (racial classifications “call for the most exacting judicial examination”), but in *Parents Involved* Chief Justice Roberts made clear that such classifications must have more than just minimal effects to justify their use in the first place. *Parents Involved*, 551 U.S. at 734. This created the contradiction noted by the district court in *Peters I*. *Peters I*, 376 F.4d at 8.

Next, a major part of approving admissions affirmative action plans has been a belief that we can trust universities to make certain judgments in good faith, about their individual need for critical mass, about the consideration of race-neutral alternatives, about applying admissions policies that require individualized review as written. *See, e.g.*, *Grutter*, 539 U.S. at 329 (good faith on the part of universities presumed absent a contrary showing). As Justice Kennedy pointed out in his *Grutter* dissent, however, a look at the practices of some universities gives reason to be cynical about whether they do in fact act in good faith. *Id.* at 393 (Kennedy, J., dissenting) (describing the testimony of a former admissions director as to the actual inner workings of race-conscious admissions committees).

Continuing on, critical mass, accepted as the end result that justifies use of race in making admissions decisions, is a concept not immune from sharp criticism, most pointedly by Chief Justice Rehnquist in *Grutter*. Chief Justice Rehnquist noted that apparently far fewer members of certain minority groups, like Native Americans, are required to achieve “critical mass” than African-Americans, and further noted the Law School made no attempt to justify these obvious disparities. *Id.* at 381 (Rehnquist, C.J., dissenting). These observations led Chief Justice Rehnquist to the conclusion that the “goal of ‘critical mass’ is simply a sham.” *Id.* at 383.

Furthermore, while the compelling interest of attaining diversity among the student body was resoundingly accepted in *Bakke* and confirmed in *Grutter*, this Court, in an opinion written by the same Justice who penned the pertinent language in *Bakke*, casually rejected the notion that diversity in faculty members was a compelling interest justifying racial classification. *Compare Grutter*, 539 U.S. at 328–31 (explaining that Justice Powell’s opinion in *Bakke* laid the foundation for establishing diversity in a student body as a compelling interest and listing the benefits of that diversity, including promotion of cross-racial understanding, breaking down stereotypes, leading to more spirited discussion and better learning outcomes), *with* *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 274–76 (1986) (opinion of Powell, J.) (dismissing the idea that maintaining racially diverse faculty as role models for minority students and to remedy past societal discrimination is a compelling interest for purposes of strict scrutiny). *See also* *Grutter*, 539 U.S. at 352 (Thomas, J., dissenting) (noting the same contradiction).

Finally, there is the fundamental and inescapable tension in all racial classifications. While the long-lasting evils of segregation and discrimination have been well-documented, *see Bakke*, 438 U.S. at 371 (“[S]egregation . . . itself stamped [African-Americans] as inferior . . . .”), it is equally well-accepted that promotion based in part on race, and not solely on merit, taints the truly deserving. As Justice Thomas explained: “[B]ecause of [race-conscious admissions] all [admitted African-Americans] are tarred as undeserving . . . When blacks take positions in the highest places of government, industry, or academia, it is an open question today whether their skin color played a part in their advancement.” *Grutter*, 539 U.S. at 373 (Thomas, J., dissenting).

# CONCLUSION

This case presents a wonderful opportunity to leave these contradictions in the past, to finally set aside state-sanctioned racial classification in the area of college admissions with their use unequivocally being for good, rather than wait to perhaps see our best intentions used for unintended purposes to the detriment of certain races. For the foregoing reasons, the judgment of the Court of Appeals upholding LX-Triolo’s current admissions program should be reversed.

Respectfully submitted.

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Counsel for Petitioner