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HOUSE JOINT RESOLUTION NO. 158

Offered January 14, 2004
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Affirming the Supreme Court decision in Grutter v. Bollinger.

Patrons—Baskerville and Watts

Referred to Committee on Rules

WHEREAS, the term, "affirmative action" was first introduced in Presidential Executive Order 10925 in 1961 to instruct federal contractors to ensure that applicants were treated equally without regard to race, color, religion, sex, or national origin; and

WHEREAS, a generation later, "affirmative action," has been praised and pilloried as an answer to racial inequality and as a method of redressing discrimination that has persisted across the land in spite of civil rights laws and constitutional guarantees; and

WHEREAS, the reality of preferential consideration on the basis of color is inextricably engraved in the history of the Commonwealth and this nation, and the ignoble legacy and practice of marginalizing men and women of color as pariahs and social detritus of society indelibly stains the social fabric; and

WHEREAS, preferential treatment on the basis of color has shaped our laws and public policy, and has helped to create a milieu of glaring inequities; and

WHEREAS, "affirmative action," characterized by compensatory programs specifically designed and targeted to acknowledge past and continuing injustices, and to overcome the effects of societal discrimination, was implemented by federal agencies to enforce the Civil Rights Act of 1964; and

WHEREAS, efforts to correct the deep injury and injustices inflicted upon African Americans since their involuntary recruitment to the New World have resulted in charges of reverse discrimination, and a proliferation of legislation and litigation has been generated to stem the tide of racial equality; and

WHEREAS, before the Civil War, the majority of African Americans were enslaved and a few free African Americans attended college in the North, and the first expansion in higher education opportunities for African Americans occurred during Reconstruction through preparatory elementary and secondary education courses offered in private colleges established by Northern religious mission societies and African-American churches; and

WHEREAS, with the end of Reconstruction, higher education opportunities for African Americans, especially for professionals, became scarcer, and emphasis was placed on training such persons in the practical arts; and

WHEREAS, the press for equality in public higher education continued and optimism that justice was on the horizon was renewed by success in the courts in decisions such as Missouri ex rel. Gaines v. Canada, Sweatt v. Painter, Brown v. Board of Education, and United States v. Fordice; and

WHEREAS, after several diverse decisions regarding the use of race in higher education admissions among the federal district and appellate courts, on June 23, 2003, the United States Supreme Court upheld the constitutionality of race-conscious admissions policies designed to promote diversity in higher education, drawing on the 1978 case of Regents of the University of California v. Bakke; and

WHEREAS, in Bakke, the sole other example of the Court's consideration of race in higher education admissions procedures, it held that student body diversity is a compelling governmental interest that can justify the use of race as a "plus" factor in a competitive admissions process; and

WHEREAS, the University of Michigan Law School admissions policy considers race as one of many factors in the context of an individualized consideration of all applicants, and applying its "strict scrutiny" standard of review within the context of higher education in Grutter v. Bollinger, the Supreme Court upheld as constitutional the law school admissions program; and

WHEREAS, the majority of African Americans do not seek preferential treatment or a "hand-out," but just "simple justice" that recognizes the invidious injustices perpetrated against them and that correcting injustice is neither immoral nor illegal; and

WHEREAS, encouraging public institutions of higher education to shape or revise college admissions policies to comply with the Court's decision in Grutter v. Bollinger evinces that Virginia's policy makers and educators affirm the Supreme Court's decision; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Supreme Court decision in Grutter v. Bollinger be affirmed; and, be it

RESOLVED FURTHER, That the Clerk of the House of Delegates transmit a copy of this resolution to the Attorney General of Virginia, Secretary of Education, the Chairman and Executive Director of the State Council of Higher Education, the Chancellor of the Virginia Community College System, the

chairmen of the boards of visitors of public institutions of higher education, the presidents of the General and Professional Advisory Committee (GPAC) and the Private College Advisory Board (PCAB) of the State Council of Higher Education, and the president of the Virginia Association of Collegiate Registrars and Admissions Officers, requesting that they further disseminate copies of this resolution to their respective constituents so that they may be apprised of the sense of the General Assembly of Virginia in this matter.