IN THE SUPREME COURT OF IOWA

Supreme Court No. 25–0462

Johnson County No. EQCV085985

In re: Ezra L. Totton Scholarship

Appeal from the Iowa District Court for Johnson County
Chad Kepros, District Judge

APPELLANT'S BRIEF

BRENNA BIRD
Attorney General of Iowa

ERIC WESSAN
Solicitor General

IAN M. JONGEWAARD
Assistant Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 281-5164
(515) 281-4209 (fax)
ian.jongewaard@ag.iowa.gov

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

ISSUE PRESENTED

I. Whether the Court should allow the University to modify the terms of the Totton Scholarship because it is now unlawful to carry out the scholarship's original race-based purpose?

ROUTING STATEMENT

This case should be retained. It presents an important issue of public importance requiring the application of new legal principles enunciated by the U.S. Supreme Court and not yet applied by this Court. *See* Iowa R. App. P. 6.1101(2)(*d*), (*f*).

NATURE OF THE CASE

Rather than wait to be sued by the federal government or private parties, the University of Iowa applied to modify the terms of the Ezra L. Totton Scholarship Fund and end the scholarship's express race-based purpose. D0001, Petition (01/06/2025). That scholarship, bequeathed to the University in a will, limits eligibility to black students. But public universities cannot rely on race for admissions, hiring, or other benefits.

Following *Students for Fair Admission v. Harvard* ("*SFFA*"), 600 U.S. 181 (2023), institutions of higher education across the nation have reexamined their policies and programs that use race-based criteria. In assessing its own programs, the University determined that the Ezra L. Totton Scholarship includes a now unlawful race-based restriction. Now, the University seeks to use the statutory mechanism enacted into Iowa Code to bring this scholarship into compliance with federal and State nondiscrimination law.

Iowa Code section 540A.106 authorizes courts to modify a gift instrument like a University scholarship if the instrument contains an unlawful purpose or restriction. Here, the University sought a judicial determination that the race-based eligibility restriction in the Ezra L. Totton Scholarship is unlawful so that the University may modify the terms of the Scholarship to excise its now-unlawful purpose. The proposed modification aligns with "the donor's probable intention." Iowa Code § 540A.106(2).

The district court denied the University's application, reasoning that there "has been no authority presented to the Court showing that *Students for Fair Admissions* has been conclusively determined to apply to gift instruments that have been donated to an academic institution and designated as provided for in the gift instrument." D0005, Order, at 1 (02/18/2025). This appeal follows.

STATEMENT OF THE FACTS

In March 1997, the University received the Last Will of Ezra L. Totton, which included the following bequeath:

> A share is bequeathed to the University of Iowa to establish a scholarship named the "Ezra L. Totton Scholarship" for Black Students majoring in the physical sciences, preferably chemistry. The money is to be invested and 90% of the interest each year is to provide. This scholarship will be presented to the University has an alumni contribution.

D0003, Amended Application, at ¶ 4 (02/22/2025).

The attorney for the Totton Estate clarified that the second-to-last sentence of the bequeathment was best read by adding "for the scholarship" to the end. D0003 at ¶ 5. Thus, he reported it was Mr. Totton's intent to state: "The money is to be invested and 90% of the interest each year is to provide for the scholarship." D0003 at ¶ 5.

The University received a total of $36,860.28 from the Estate ("Fund"). D0003 at ¶ 6. And the Fund was established at the University

as a permanently endowed fund and was recently valued at approximately $58,015.58. D0003 at ¶¶ 7, 8.

On January 6, 2025, the University applied to modify the terms of the gift funds under Iowa Code section 540A.106(2). D0001, at 1–4. On February 11, the University amended its application, providing more legal analysis explaining *SFFA* and the State's rationale for seeking to amend the scholarship terms. D0003 at 1–4.

The district court dismissed the Application without prejudice, finding that, although the University had presented arguments as to why the gift instrument was unlawful after *SFFA*, it had not "necessarily establish[ed], as a matter of law, the unlawfulness of the gift instrument." D0005 at 1. The court noted that "there still has been no authority presented to the Court showing that *Students for Fair Admissions* has been conclusively determined to apply to gift instruments that have been donated to an academic institution and designated as provided for in the gift instrument." D0005 at 1.

The University appeals.

ARGUMENT

I. The Court should allow the University to modify the terms of the Totton Scholarship to comply with the Equal Protection Clause of the Fourteenth Amendment.

A. Error preservation and standard of review.

The University of Iowa petitioned to modify the Ezra L. Totton Scholarship Fund under Iowa Code section 540A.106(2). In its application to modify, the University explained that it reviewed its scholarship terms following *Students for Fair Admissions v. Harvard* and determined that the race-based eligibility restriction was unlawful. D0001 at 2–3; D0003 at 2–3. The Fund's restriction limiting eligibility to "Black Students" violated federal law and requested modification to benefit "first generation students majoring in the physical sciences, preferably chemistry." D0001 at 3–4; D0003 at 3–4. The University asserted that Iowa Code section 540A.106(3) authorized such modification when a charitable purpose "becomes unlawful" and that the proposed change was "consistent with the charitable purposes expressed by the Donor." D0001 at 2–3; D0003 at 3.

The district court dismissed the University's Amended Application without prejudice, finding that while the University had presented an "argument as to why the gift instrument at issue in this case is unlawful in light of the issuance of the Students for Fair Admissions case," it had not "necessarily establish[ed], as a matter of law, the unlawfulness of the gift instrument." D0005 at 1.

The Court's standard of "review of an appeal from a declaratory judgment action is determined by how the case was tried in district court," with equitable reviewed *de novo*. *Matter of Coe College*, 935 N.W.2d 581, 586 (Iowa 2019). And constitutional questions are reviewed *de novo* too. *Clarke Cnty. Reservoir Comm'n v. Robins*, 862 N.W.2d 166, 172 (Iowa 2015). Because this case presents a constitutional challenge to race-based restrictions under the Equal Protection Clause of the Fourteenth Amendment, *de novo* review applies. Questions of statutory interpretation are reviewed for correction of errors at law. *Id*.

B. Iowa Code section 540A.106 permits modification of a scholarship's terms when its charitable purpose becomes unlawful.

Courts may modify a gift instrument's "charitable purpose or [] restriction" if it "becomes unlawful, impracticable, or impossible to fulfill." Iowa Code § 540A.106(3). Under section 540A.102, "gift instrument" includes money given to universities to fund scholarships. *See* Iowa Code § 540A.102(3) ("'Gift instrument' means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund."). "'Institutional fund' means a fund held by an institution exclusively for charitable purposes." Iowa Code § 540A.102(5).

The statute authorizes courts to modify gift restrictions that have "become[] unlawful" while preserving the broader charitable purpose. *Id*.

That language contemplates this situation—where a once-lawful restriction has been rendered unlawful by later legal developments.

C. The Supreme Court's decision in *Student's for Fair Admissions v. Harvard* establishes that race-based preferences in higher education violate the Equal Protection Clause.

In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* ("*SFFA*"), 600 U.S. 181 (2023), the Supreme Court fundamentally altered the legal landscape for race-conscious programs in higher education by holding that Harvard's and the University of North Carolina's race-based admissions programs violated the Equal Protection Clause of the Fourteenth Amendment.

SFFA began by reaffirming the foundational principles protected by the Equal Protection Clause. *Id.* at 206. The Court emphasized that the Equal Protection Clause's "core purpose" is "do[ing] away with all governmentally imposed discrimination based on race," noting that "[e]liminating racial discrimination means eliminating all of it." *Id.* (quotations omitted). The Court explained that the Equal Protection Clause applies "without regard to any differences of race, of color, or of nationality—it is 'universal in [its] application.'" *Id.* (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)). The Court stressed that "[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color."

Id. at 206 (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 289–90 (1978) (Powell, J.)).

The Court traced the evolution of its race-based admissions jurisprudence, beginning with *Regents of University of California v. Bakke*, 438 U.S. 265 (1978). In that "deeply splintered decision that produced six different opinions," Justice Powell's opinion would eventually come to "serv[e] as the touchstone for constitutional analysis of race-conscious admissions policies." *SFFA*, 600 U.S. at 208–09 (quotations omitted). That opinion rejected three of the university's justifications as insufficiently compelling but found that "obtaining the educational benefits that flow from a racially diverse student body" could constitute "a constitutionally permissible goal for an institution of higher education." *Id*. at 209. But Justice Powell emphasized strict limitations: universities could not employ quota systems, could not use race to foreclose individuals from consideration, and race could operate only as "a 'plus' in a particular applicant's file." *Id*. at 209–10.

SFFA then examined *Grutter v. Bollinger*, 539 U.S. 306 (2003), where "the Court for the first time endorse[d] Justice Powell's view that student body diversity is a compelling state interest that can justify the use of race in university admissions." *SFFA*, 600 U.S. at 211 (quoting *Grutter*, 539 U.S. at 325). *Grutter* established several critical limitations: universities could not "establish quotas for members of certain racial groups," could not "insulate applicants who belong to certain racial or

ethnic groups from the competition for admission," and could not seek "some specified percentage of a particular group merely because of its race or ethnic origin." *Id*. (quoting *Grutter*, 539 U.S. at 329–330, 334).

Importantly, *Grutter* imposed two key safeguards against the dangers of race-based government action. *First*, it prohibited programs that operated on stereotyping—universities were "not permitted to operate their admissions programs on the belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue." *Id*. at 212 (quotations omitted). *Second*, the Court required that race not be used "as a negative—to discriminate against those racial groups that were not the beneficiaries of the race-based preference," such that a university's use of race could not "unduly harm[] nonminority applicants." *Id*. (quotations omitted).

Most critically, *Grutter* "imposed one final limit on race-based admissions programs. At some point, the Court held, they must end." *Id.* The Court emphasized this requirement repeatedly, stating that race-based programs "must have reasonable durational limits," "must be limited in time," "must have a logical end point," and their "deviation from the norm of equal treatment" must be "a temporary matter." *Id*. (quotations omitted). The Court concluded with the expectation "that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." *Id*. at 213.

Because the universities' admissions programs involved explicit racial classification—categorizing and treating applicants differently based solely on race—*SFFA* applied a strict scrutiny standard of review. *Id.* at 206–207. Under the Equal Protection Clause, any government action that classifies individuals by race is "inherently suspect" and triggers strict scrutiny review. *Id.* at 206–207, 209. To satisfy that standard, the government must show that "racial classification is used to 'further compelling government interests,'" and, if so, that "the government's use of race is 'narrowly tailored'—meaning 'necessary'—to achieve that interest." *Id.* at 206–207. *SFFA* applied strict scrutiny and found that respondents' admissions programs failed all constitutional requirements. *Id.* at 214–218. The Court established that universities must comply with strict scrutiny, may never use race as a stereotype or negative, and must—at some point—end their race-based programs. *Id.*

The universities' asserted interests were "not sufficiently coherent for purposes of strict scrutiny." *Id.* at 214. Harvard's goals included "training future leaders," "better educating its students through diversity," and "producing new knowledge stemming from diverse outlooks," while UNC pointed to "promoting the robust exchange of ideas," "preparing engaged and productive citizens and leaders," and "enhancing appreciation, respect, and empathy." *Id.* at 214–15. Those goals were unmeasurable: "How is a court to know whether leaders have been adequately 'train[ed]'; whether the exchange of ideas is 'robust'; or

whether 'new knowledge' is being developed?" *Id.* at 214. Moreover, "how is a court to know when they have been reached, and when the perilous remedy of racial preferences may cease?" *Id.*

The universities also "fail[ed] to articulate a meaningful connection between the means they employ and the goals they pursue." *Id.* at 215. The racial categories used were "plainly overbroad," "arbitrary or undefined," or "underinclusive," making it "far from evident . . . how assigning students to these racial categories and making admissions decisions based on them furthers the educational benefits that the universities claim to pursue." *Id.* at 216–17.

The admissions programs thus violated the constitutional prohibition against using race as a "negative." *Id.* at 218. The Court noted that Harvard's consideration of race resulted in "fewer Asian American and white students being admitted," and that college admissions are "zero-sum"—"[a] benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter." *Id.* at 218–19.

The programs also failed because they required stereotyping—"the very thing that *Grutter* foreswore." *Id.* at 220. The Court explained that Harvard's admissions process rested "on the pernicious stereotype that 'a black student can usually bring something that a white person cannot offer,'" while UNC argued that race in itself "'says [something] about who you are.'" *Id.* The Court rejected this approach, stating that "[w]hen a

university admits students 'on the basis of race, it engages in the offensive and demeaning assumption that [students] of a particular race, because of their race, think alike.'" *Id.* at 220–21 (quoting *Miller v. Johnson*, 515 U.S. 900, 911–12 (1995)).

Finally, the Court found that both programs "lack[ed] a 'logical end point'" as required by *Grutter*. *Id.* at 221. The universities suggested their programs would end when there was "meaningful representation and meaningful diversity" on campuses, but the Court found this approach constituted impermissible "racial balancing." *Id.* at 223. Harvard "concede[d] that its race-based admissions program has no end point" and acknowledged "that the way it thinks about the use of race in its admissions process is the same now as it was nearly 50 years ago." *Id.* at 225 (quotations omitted). UNC similarly "admit[ted] that it 'has not set forth a proposed time period in which it believes it can end all race-conscious admissions practices.'" *Id.*

SFFA ultimately held that Harvard's and UNC's admissions programs violated the Equal Protection Clause because they "lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points." *Id.* at 230. The Court emphasized that "[m]any universities have for too long done just the opposite" of treating students as individuals, concluding "wrongly, that the touchstone of an individual's identity is not challenges bested, skills

built, or lessons learned but the color of their skin." *Id.* at 231. The Court declared that "[o]ur constitutional history does not tolerate that choice." *Id.*

The Court clarified that "nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise." *Id.* at 230. Yet that allowance was accompanied by the Court cautioning, "[w]hat cannot be done directly cannot be done indirectly," and any benefit "must be tied to that student's courage and determination" or "unique ability to contribute to the university." *Id.* at 230–31 (emphasis omitted). "In other words, the student must be treated based on his or her experiences as an individual—not on the basis of race." *Id.* at 231.

D. Post-*SFFA* developments confirm that race-based scholarships like the Totton Scholarship are unlawful.

Courts around the country made clear that *SFFA* is not limited to race-based college admissions—its rendering of the Equal Protection Clause applies more broadly, including to race-based college scholarships and grants.

1. Consider the Wisconsin Court of Appeals's decision in *Rabiebna v. Higher Educational Aids Board*, applying *SFFA*'s principles to strike down a state-funded grant program that provided college aid exclusively to "financially needy students of only certain racial, national origin,

ancestry, and alienage groups." 2025 WL 657120, *1 (Wis. App., 2025). The court held that the state's asserted interest in "increase[ing] retention and graduation rates of minority students" was not a compelling state interest under strict scrutiny analysis. *Id*. at *11. The court reasoned that *SFFA* "completely cut the legs out from under" any argument that educational diversity constituted a compelling government interest. *Id*. at *10. The court emphasized that following *SFFA*, "precedents have identified only two compelling interests that permit resort to race-based government action"— "remediating specific, identified instances of past discrimination" and "avoiding imminent and serious risks to human safety in prisons"—neither of which applied to the grant program. *Id*. at *11 (citing *SFFA*, 600 U.S. at 207).

Even if such an interest existed, *Rabiebna* found the program was not narrowly tailored. *Id*. at *15–20. The court rejected arguments that the grants were constitutional because they represented "only a little bit of race, national origin, ancestry, or alienage discrimination" or because recipients might have "more access to financial aid from other sources." *Id*. at *16. Race was used as a "negative" under the grants program because "race was determinative for all students precluded from eligibility." *Id*. at *20. So the offered "individualized considerations" did not save the program because "race, national origin, ancestry, or alienage was *the determinative factor* as to grant eligibility." *Id*. at *18.

The Court added that the program violated equal protection because it had "no logical end point"—the grants "had been going on for nearly 40 years" with no sunset provision. *Id.* at *20–21.

Rabiebna is one example applying *SFFA*'s principles beyond admissions to scholarships and grants. *See id.* at *11 ("While HEAB attempts to limit the holding of *SFFA* to only race-based college admissions programs, the *SFFA* Court did not so limit the application of the equal protection principles it articulated."). *SFFA*'s equal protection "principles appear to apply to nearly every context in which government attempts to use race, national origin, ancestry or alienage as a discriminating factor, just as the principles articulated in *Brown* were applied by lower courts and the Supreme Court to 'invalidate[ ] all manner of race-based state action' in the years following that decision." *Id.* *23 (quoting *SFFA*, 600 U.S. at 204).

2. Federal officials and private parties alike across the country now seek to enforce *SFFA* against all manners of race-based educational programs, not limited to college admissions.

The Department of Education has opened investigations into several universities "for allegedly awarding impermissible race-based scholarships." U.S. Dep't of Educ., *Office for Civil Rights Initiates Title VI Investigations into Institutions of Higher Education*, (Mar. 14, 2025).

And in Illinois, the U.S. Department of Justice threatened legal action against Illinois's "unlawful minority-only scholarship program,"

asserting that the program "unconstitutionally discriminated on the basis of race in violation of the Fourteenth Amendment." Office of Public Affairs, *Unlawful Illinois DEI Scholarship Program Suspended After Justice Department Threatened Lawsuit*, U.S. Dept. of Justice, (Apr. 11, 2025), https://perma.cc/LVX3-N6FA.

Like the Totton Scholarship, "[t]he scholarship program established by Illinois law used race as a prerequisite for participation, specifically excluding students of some races but not others in violation of federal law." *Id.* Faced with that enforcement action, Illinois universities, including Northwestern, Loyola, and the University of Chicago, terminated participation in a state DEI scholarship program. *Id.* And "[n]one of the institutions that the Department notified of its findings is currently electing to continue its participation in the program." *Id.*

Private parties are also challenging race-based scholarships. Drake University, one of Iowa's private universities, faces a federal civil rights complaint alleging its Crew Scholars Program violates Title VI by conditioning eligibility on race. Philip Joens, *Group opposed to race preferences files civil rights complaint against Drake University*, The Des Moines Reg., (Apr. 22, 2025), https://perma.cc/Q3CT-65AC.

Meanwhile other universities have proactively discontinued race-based scholarships to avoid litigation. They—like the University here—have chosen to discontinue or modify their race-based scholarships to

comply with the Constitution even before facing litigation. For example, the University of Alabama at Birmingham discontinued the Herschell Lee Hamilton, M.D., Endowed Scholarship for Black Medical Students. *See, e.g.,* John Archibald, *UAB fears Trump reprisals, kills scholarships for Black medical students*, AL.com, (Apr. 28, 2025), https://perma.cc/24FH-537B.

3. The Totton Scholarship cannot survive strict scrutiny under the framework established in *SFFA* and applied in *Rabiebna*. Under strict scrutiny, the University must demonstrate both a compelling governmental interest and that the race-based classification is narrowly tailored to achieve that interest.

First, there is no compelling governmental interest. Following *SFFA*, courts have "identified only two compelling interests that permit resort to race-based government action"—"remediating specific, identified instances of past discrimination that violated the Constitution or a statute" and "avoiding imminent and serious risks to human safety in prisons." *SFFA*, 600 U.S. at 207. Neither applies here. The Totton Scholarship was not created to remedy identified past discrimination by the University, nor does it address prison safety.

SFFA definitively rejected educational diversity as a compelling interest, holding that goals like "training future leaders," "better educating students through diversity," and "producing new knowledge stemming from diverse outlooks" are "not sufficiently coherent for

purposes of strict scrutiny" because they are unmeasurable and lack clear endpoints. *Id.* at 214–15. Any similar diversity-based justification for the Totton Scholarship would fail under *SFFA*.

Second, even if a compelling interest existed, the scholarship is not narrowly tailored. The Totton Scholarship fails each requirement for narrow tailoring identified in *SFFA* and *Rabiebna*. The scholarship makes race "the determinative factor as to eligibility," exactly what *Rabiebna* found impermissible. 2025 WL 657120, at *18. Students are either eligible (if black) or completely ineligible (if not black) based solely on race, with no individualized consideration of personal experiences or circumstances. D0003 at ¶ 4. And the scholarship contains no sunset provision or mechanism for ending its race-based restriction. As *Rabiebna* recognized, there must be a "logical end point" to any race-based program, yet the Totton Scholarship has operated for decades with no contemplated end. *Id.* at *20–21.

Finally, the scholarship uses race as a "negative" against non-black students who are "flatly ineligible" regardless of financial need, academic merit, or any other factor. *Id.* at *20. That zero-sum distribution necessarily "advantages [black students] at the expense of" all other students—exactly what *SFFA* prohibited. 600 U.S. at 218–19. The Totton Scholarship thus violates the Equal Protection Clause under the strict scrutiny analysis mandated by *SFFA* and cannot lawfully continue in its current form.

The University should not have to wait to be investigated or sued before it may ensure its programs comply with the Constitution. Maintaining the race-based eligibility restriction in the Totton Scholarship would expose the University to significant legal risk, potential loss of federal funding, and reputational harm. As *Rabiebna* and the enforcement actions against other institutions demonstrate, race-based scholarships are unconstitutional. And if the University of Iowa is sued and loses, it may be forced to pay attorneys' fees. Race-based eligibility for scholarships cannot be reconciled with the Constitution's guarantee of equal protection.

E. The proposed modification is consistent with the donor's charitable purpose.

The University proposes modifying the Totton Scholarship to benefit "first generation students majoring in the physical sciences, preferably chemistry" rather than "Black Students" in those fields. This modification preserves the core charitable purpose while removing the unlawful race-based restriction.

The modification maintains all substantive elements of Mr. Totton's bequeath: (1) the scholarship retains his name; (2) it continues to benefit students in physical sciences, preferably chemistry; (3) it preserves the specified funding mechanism (90% of annual interest); and (4) it maintains the alumni contribution designation. The only change

substitutes an unlawful race-based criterion with a lawful, race-neutral alternative.

The proposed modification represents the least restrictive means of bringing the Totton Scholarship into compliance with federal law while honoring the donor's charitable intent. The modification changes only what is legally necessary—the eligibility criteria—while preserving all other aspects of the scholarship.

A definitive answer from this Court will also allow Iowa Universities a direct basis to modify any other scholarship that violates the Equal Protection Clause or *SFFA*—including the other petitions dismissed by the district court without prejudice.

CONCLUSION

For these reasons, the district court's dismissal of the petition for declaratory judgment should be reversed.

STATEMENT ON ORAL SUBMISSION

This case does not require oral argument. But given the unique posture of this case, if the Court believes that oral argument would be helpful, the State is happy to appear for argument.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

ERIC WESSAN
Solicitor General

/s/ Ian M. Jongewaard
IAN M. JONGEWAARD
Assistant Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 281-5164
(515) 281-4209 (fax)
ian.jongewaard@ag.iowa.gov

Attorneys for Appellant

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and contains 4,139 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1).

/s/ *Ian M. Jongewaard*
IAN M. JONGEWAARD

CERTIFICATE OF FILING AND SERVICE

I certify that on May 29, 2025, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

/s/ *Ian M. Jongewaard*
IAN M. JONGEWAARD