THE PROBLEM WITH "PEOPLE OF COLOR"

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INTRODUCTION

"History speaks. In some form, it can be heard forever. The race-based gaps that first developed centuries ago are echoes from the past that still exist today."[1] All persons naturalized in the United States under the Fourteenth Amendment Equal Protection Clause hold the formidable honor of being protected from the application of imbalanced laws against them.[2] We cannot, however, consider people "equal" under the law if the words used to address them in the legal field and beyond are a generalization of who they are. The essence of the Equal Protection Clause of the Fourteenth Amendment is that "the guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color."[3] During a time of extreme racial turmoil, white Americans used derogatory terms when identifying and referring to non-white individuals.[4] As time passed, new phrases took the place of those terms.[5] The variations in phrases used to describe each other mirror our progress toward ensuring everyone feels respectfully included.[6] While American society has taken many steps forward regarding the phrases we use, there are moments when we stumble backward.

The phrase "People of Color" ("POC")[7] holds historical connotations. Initially, well-meaning individuals used the phrase to have an inclusive, diverse impact when describing minorities. But like other ostensibly remedial measures,

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1. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 393 (2023) (Jackson, J., dissenting) (rejecting the Court's determination that admissions programs such as affirmative action are a problem rather than a solution in higher education).

2. U.S. CONST. amend. XIV, § 1.

3. Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 290 (1978), *overruled by* Batson v. Kentucky, 476 U.S. 79 (1986).

4. Gina Rubel, *Racist Language and Origins I Didn't Always Know*, JDSUPRA (Sept. 11, 2020), https://www.jdsupra.com/legalnews/racist-language-and-origins-i-didn-t-35616/ (showing different words carrying derogatory connotations).

5. Kee Malesky, *The Journey from 'Colored' to 'Minorities' to 'People Of Color',* NPR (Mar. 30, 2014, 9:25 PM), https://www.npr.org/sections/codeswitch/2014/03/30/295931070/the-journey-from-colored-to-minorities-to-people-of-color.

6. *Id.*

7. This Comment will use the terms POC, Women of Color, and Persons of Color based on the context of specific situations. All these terms should be regarded as equivalent to "People of Color."

the use of the phrase can have the opposite effect. This Comment suggests legal professionals such as attorneys, judges, law students, law professors, and legal staff should adopt an approach that acknowledges individual identities rather than utilizing the all-encompassing phrase, People of Color. When referring to Black, Asian, Hispanic, and racially diverse people, the phrase "People of Color" has become more harmful than what it was created for. While this Comment does not promote compelling speech, it explores the difficulties of ensuring equal protection under the Fourteenth Amendment when language glosses over differences. Generalizations of identities make it harder for institutions to comply with the spirit of the Equal Protection Clause.

First, this Comment addresses affirmative action as an analogy. Affirmative action was created to remediate racist policies embedded in school admissions.[8] Nevertheless, history shows many harmful results stem from the implication of affirmative action.[9] This section will touch on the historical and modern views of affirmative action from early cases to cases today. Second, this Comment discusses the history of the phrase "People of Color," providing insight into the intentions behind the creation of the phrase itself. Third, this Comment describes some of the complications with the phrase "People of Color," including that using POC is a disservice to different identities that tend to be grouped, the phrase "People of Color" erases Black issues and creates the implication that saying "Black" is impolite, and the phrase "People of Color" advances racial prejudice in the legal field. Lastly, this Comment proposes a direct approach: people should say what they mean instead of hiding behind language.

I. THE AFFIRMATIVE ACTION ANALOGY

In the early years of America, non-white children were excluded from schools because of race.[10] The founders of the nation believed educating people would be difficult without creating a systematic way of schooling.[11] Although some state courts have found education to be a fundamental right for all,[12] it is crucial for the government to seek ways to alleviate the strain imposed by previous barriers. Affirmative action is one of the most well-known remedial measures to

8. Mark J. Farrel, *Unintended Consequences Affirmative Action's Impact on Higher Education*, 2 HOHONU 33, 33 (2004).

9. *See generally id.* (showing the consequences of affirmative action).

10. Nancy Kober & Diane Stark Rentner, *History and Evolution of Public Education in the US*, CTR. ON EDUC. POL'Y 1, 5 (2020), https://files.eric.ed.gov/fulltext/ED606970.pdf.

11. *Id.* at 2.

12. Pauley v. Kelly, 255 S.E.2d 859, 860 (W. Va. 1979) ("[T]he mandatory requirements of 'a thorough and efficient system of free schools' found in Article XII, Section 1 of the West Virginia Constitution, make education a fundamental, constitutional right in this State."); *see also* Robinson v. Cahill, 303 A.2d 273, 285 (N.J. 1973) ("[I]t is argued that if the State decides that a service shall be furnished, the service should thereby become one of 'fundamental right.'"); *but see* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 1 (1973) (ruling that education is not considered a fundamental right under federal law).

compensate for a history of systematic racial barriers in higher education.[13] Affirmative action is "the practice of selecting people for jobs, college sports, and other important posts in part because some of their characteristics are consistent with those of a group that has historically been mistreated by reasons of race, sex, etc."[14]

In September 1965, President Lyndon B. Johnson signed Executive Order 11246, which introduced nondiscriminatory requirements for hiring practices and employment from government officials based on race, color, religion, and national origin.[15] Affirmative action is widespread in many aspects of society and demonstrated using various methods. Regarding sex, affirmative action made it feasible for white women to bring sexual discrimination claims forward for review within the workplace.[16] Affirmative action is present when schools provide positions solely for professors who are minorities.[17] Affirmative action is present in plans where the goal is to promote women and remedy past gender discrimination.[18] Affirmative action is even present in unexpected spaces such as male-dominated workplaces of construction sites.[19]

A. Tracing the Roots of Affirmative Action

In the 1960s, colleges and universities in the United States began integrating affirmative action into their admission policies.[20] The policies aimed to create an enriching, diverse student body and rectify the haunting effects of past discrimination in college admissions.[21] In the watershed case of *Regents of the University of California v. Bakke*, the necessity of affirmative action in the school admission process was born.[22] Here, the respondent brought a claim against the Regents of the University of California for violating the Fourteenth Amendment on the basis that the university established a special admission program where they reserved

13. *See generally* Will Del Pilar, *A Brief History of Affirmative Action and the Assault on Race-Conscious Admissions*, EDTRUST (June 15, 2023), https://edtrust.org/blog/a-brief-history-of-affirmative-action-and-the-assault-on-race-conscious-admissions/.

14. *Affirmative Action*, BLACK'S LAW DICTIONARY (11th ed. 2019).

15. Exec. Order No. 11246, 30 Fed. Reg. 12327 (Sept. 28, 1965).

16. Jennifer Pierce, *Affirmative Action Reversal: Understanding the History and Implications*, UNIV. OF MINN. (June 30, 2023), https://cla.umn.edu/news-events/story/affirmative-action-reversal-understanding-history-and-implications.

17. *See generally* Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986) (ruling on respondents' claim that layoff policies of nonminority individuals created positions for minority teachers).

18. Johnson v. Transp. Agency, 480 U.S. 616, 625 (1987) (describing petitioner's claim against a transportation agency alleging that he was passed over for promotions in favor of his female counterparts).

19. *See generally* Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995) (showing that a petitioner brought suit because they were denied an opportunity in a contract for a minority business entity as a presumptive preference was given to that entity).

20. *Affirmative Action*, POL'Y CIRCLE, https://www.thepolicycircle.org/brief/affirmative-action/ (last visited Oct. 16, 2024).

21. *Id.*

22. Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 269 (1978).

sixteen out of one hundred seats for minority admissions in the medical school.[23] In general, this case was a pivotal event for the crafting of affirmative action as the case determined that the Constitution prohibited schools from having racial quotas.[24]

Courts have consistently exercised caution in their approach to affirmative action in educational institutions. In some cases, public universities temporarily banned affirmative action due to increased criticism.[25] In other cases, affirmative action was left solely in the hands of voters.[26] In those cases, voters were allowed the opportunity to determine whether to exclude or permit affirmative action decisions in the public school admission process.[27]

Relatedly, in the case of *Gratz v. Bollinger*, the university admission policy was based on a point system that allocated twenty extra points to applicants who were members of minority groups.[28] The petitioners applied for admission to the University of Michigan's College of Literature, Science, and the Arts in 1995 and 1997.[29] Although both were considered within the qualified range, both were denied.[30] The admissions office, in this case, used written guidelines each academic year and considered many different factors when making admissions decisions, such as high school grades, standardized test scores, and curriculum strength.[31] The guidelines the admissions office developed had a selection method guaranteeing twenty points out of the needed one hundred points for any underrepresented racial or ethnic minority.[32] The Court ruled the point system was not "narrowly tailored" to achieve the university's interest in diversity and that it ultimately violated the Equal Protection Clause.[33]

Conversely, courts have been open to racial quotas where race is used as a factor along with other assessments. For example, in *Grutter v. Bollinger*, a white student filed suit against the University of Michigan Law School, arguing the school violated the Fourteenth Amendment Equal Protection Clause by denying the students' application based on a system where race was used as a predominant factor of the application.[34] The Court ruled in favor of the University of Michigan Law School because their use of race as a factor to acquire scholastic advantages from a varied student body was not prohibited by the Equal Protection Clause.[35] The school affirmed its commitment to diversity by considering factors other than

23. *Id.* at 269-70.

24. *See generally id.* (determining the respondent be admitted into the medical school, and that the schools could not have racial quotas).

25. Hopwood v. Texas, 236 F.3d 256, 262 (5th Cir. 2000).

26. Schuette v. Coal. to Def. Affirmative Action, 572 U.S. 291, 298 (2014).

27. *Id.* at 299.

28. Gratz v. Bollinger, 539 U.S. 244, 266 (2003).

29. *Id.* at 265.

30. *Id.*

31. *Id.* at 266.

32. *Id.*

33. *Id.* at 268.

34. Grutter v. Bollinger, 539 U.S. 306, 319-20 (2003).

35. *Id.* at 320.

race—such as GPA, talents, experiences, and potential—for evaluation purposes.[36] The Court found this sufficient as the policy looked beyond the criteria of grades and test scores, to other important factors that would be imperative to the law school's educational objectives.[37] As shown, racial quotas for affirmative action can be accomplished in many ways: from considering race as a factor in one's application or creating a point system in the application process that allocates points to specific races.[38]

B. Examining Affirmative Action Today

The Supreme Court dramatically altered the affirmative action landscape in two recent companion cases, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, and *Students for Fair Admissions, Inc. v. University of North Carolina* ("SFFA cases").[39] In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, the SFFA asserted Harvard used a "racial balancing" test rather than use race as a "'plus' factor" in their undergraduate admissions process which ultimately violated the Equal Protection Clause.[40] And in *Students for Fair Admissions, Inc. v. University of North Carolina*, SFFA argued the University of North Carolina ("UNC") employed racial preferences in undergraduate admissions where other alternatives would have achieved the same goal of a diverse student body.[41]

Harvard had many stages of the admissions process, including the "lop" stage, which contained only information concerning the applicant's legacy status, recruited athlete status, financial aid eligibility, and race.[42] UNC, however, encouraged their admissions office to consider not only race but other factors such as academic performance, testing results, extracurricular activities, essay quality, and personal and background information.[43] The Court ruled against the schools and affirmative action that day, holding:

> [t]he Harvard and UNC admissions programs cannot be reconciled with the guarantees of the Equal Protection Clause. Both programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably negatively employ race, involve racial stereotyping, and lack meaningful endpoints. We have never permitted admissions programs to work in that way, and we will not do so today.[44]

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36. *Id.* at 319.

37. *Id.* at 324.

38. *Id.* at 306; *see also Gratz,* 539 U.S. at 244.

39. *See* Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*,* 600 U.S. 181 (2023) (ruling against affirmative action).

40. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 261 F. Supp. 3d 99, 103 (D. Mass. 2017).

41. Students for Fair Admissions, Inc. v. Univ. of N.C., 567 F. Supp. 3d 580, 589-91 (N.C. M.D. Ct., 2018).

42. *Students for Fair Admissions*, 600 U.S. at 195.

43. *Id.* at 195-96.

44. *Id.* at 230.

Those who support affirmative action perceive it as a tool that, if eliminated from college admissions, would be "indisputably a major setback."[45] Moreover from that perspective, affirmative action can produce diversity in the collegiate environments and society as a whole.[46] Imagine a hypothetical Black high-school student and white high-school student who both worked tirelessly to receive a 3.9 GPA. The private college they are both applying for is historically a predominately white institution ("PWI"). The school's student demographic is mostly composed of people who were admitted based on legacy status, with parents whose jobs range from doctors to scientists. The school only has one spot left to offer. Would it be wrong for that school to offer admissions to a Black student over a white student because they believe providing an offer to that specific individual would bring a diverse perspective? If the admission process no longer recognizes affirmative action, students without legacy status, educational resources, and donor relations—factors still significant in today's college admission process—will continue to compete with students who historically possess these advantages. If test scores are the main things used in a college admission process, then students who do not have access to a worthy quality of education will be at an automatic disadvantage.[47] Affirmative action appears to be the optimal solution to these concerns, but there is more to the story.

Opponents of affirmative action believe the assumption that only minorities bring certain ideas and differing perspectives is premature and offensive because it implies all minorities think the same.[48] Additionally, from that standpoint, they believe a "racist past cannot be undone through more racism,"[49] creating the theory that reverse discrimination exists where members of majority groups may feel unfairly treated. Consider the same hypothetical scenario above, but now envision the Black student as the child of a lawyer and a doctor, both graduates of the school, providing the student with all essential resources for success during upbringing. In contrast, the white student is a first-generation student raised by a single parent with limited resources. Would it still constitute a diverse perspective if the school were to give the last spot to the Black student? Adding these background details to the hypothetical, it appears giving the spot to the Black student would contradict the school's objective of fostering a more diverse perspective.

While there is much to debate about the Supreme Court's recent affirmative action jurisprudence, this Comment is not an assessment of the Supreme Court's decision, nor the history surrounding that decision. The important story here is that affirmative action concealed legacy admissions and promotion of wealthy international students as opposed to supporting marginalized students from the United

45. Sarah Hinger, *Moving Beyond the Supreme Court's Affirmative Action Rulings*, ACLU (July 12, 2023), https://www.aclu.org/news/racial-justice/moving-beyond-the-supreme-courts-affirmative-action-rulings.

46. Katharine Meyer, *The End of Race-Conscious Admissions*, BROOKINGS (June 29, 2023), https://www.brookings.edu/articles/the-end-of-race-conscious-admissions/.

47. Charles J. Ogletree Jr., *The Case for Affirmative Action*, STAN. MAG. (Sept./Oct. 1996), https://stanfordmag.org/contents/the-case-for-affirmative-action.

48. David Sacks & Peter Thiel, *The Case Against Affirmative Action*, STAN. MAG. (Sept./Oct. 1996), https://stanfordmag.org/contents/the-case-against-affirmative-action.

49. *Id.*

States. The policy was created to combat the inequalities faced by minorities from the United States, which international students are not subjected to. Nevertheless, according to the Worldwide Data for Harvard Admissions, between 2016 to 2018, Harvard extended admission to 16,272 international students.[50] This is far more interesting when we consider the fact that Harvard's acceptance rate is three percent.[51] Nearly three-quarters of white students would not gain admission into Harvard without the support of athlete status, legacy preferences, dean's interest list, and being a child of a faculty or staff.[52] Considering these facts, affirmative action appeared to operate unfavorably for the marginalized students who were denied admission to Harvard in those instances. Harvard serves as just one example of numerous educational institutions implementing admission practices, including affirmative action.

Whether you are for or against affirmative action, it is fundamental to note it is a major illustration of a remedial measure with an opposite effect. In the legal field, many other lawful remedies have opposite effects. More specifically, there are lawful remedies that covertly hide racial inclinations, such as awarding back pay, injunctive relief, and attorney fees after claims of discrimination are legally found.[53] Other remedies include statutory treatment that prevents claimants from receiving more than the specific awards under that precise statute.[54] These remedies failed to offer comprehensive alternatives to individuals expressing concerns; instead, they merely obscured the underlying issues at hand. The affirmative action analogy is parallel to the creation, purpose, and effect of the phrase "People of Color."

II. THE PROBLEM WITH "PEOPLE OF COLOR"

The phrase "People of Color" is used as a catch-all shorthand for several minority populations.[55] In a way, it is checking the box of "other" versus "white." Many ethnic groups are distinct, and combining them would be a disservice to those groups because each group has essential characteristics in their culture differentiating them from others. It is best to celebrate those characteristics individually in a way that would advance our society socially and diversly.

There is a power imbalance between the different ethnic groups. Anti-blackness has always been prevalent within minority communities. Using the

50. *Worldwide Data*, HARV. WORLDWIDE, https://worldwide.harvard.edu/worldwide-data (last visited Sept. 30, 2024).

51. *Harvard University Admissions*, U.S. NEWS & WORLD REP., https://www.usnews.com/best-colleges/harvard-university-2155/applying (last visited Sept. 21, 2024).

52. Peter Arcidiacono et al., *Legacy and Athlete Preferences at Harvard*, 40 J. LAB. ECON. 133, 135 (2022).

53. Smith v. Union Oil Co. of Cal., 1977 WL 77 (N.D. Cal. 1977) (showing a legal remedy such as money being used to make the client feel "whole").

54. Johnson v. Baxter Healthcare Corp., 907 F. Supp. 271, 274 (N.D. Ill. 1995) (showing a legal remedy that was provided in an Illinois statute for specific issues pertaining to discrimination while also covertly hiding racial inclination by not allowing the Plaintiff to sue further under another act).

55. Warren Milteer, Jr., *The Lexicon Origins of People of Color*, AAIHS (Sept. 27, 2022), https ://www.aaihs.org/the-lexicon-origins-of-people-of-color/.

phrase "People of Color" will erase the issues that pertain directly to Black individuals who are, more often than not, considered the lowest in the racial hierarchy.[56] Examples where Black individuals are the lowest in the racial hierarchy include wage gaps, poverty, and high-cost mortgages.[57] In addition, the use of "People of Color" in some instances creates the assumption that saying "Black" is impolite.[58] Moreover, employing POC in the courtroom as a strategic approach to accommodate implicit biases within the jury system perpetuates racial prejudice in the legal field. This practice also hinders lawyers in fulfilling their legal responsibilities, as they must divert their attention from advocacy to clarify terms related to individuals' identities. Using POC in legal settings such as law schools will lead to the phrase being used in the courtrooms as law students will soon become part of the legal profession.

Thus, this Comment proposes discontinuing the consistent use of "People of Color" and advocates for adopting an alternative race-conscious approach applicable in the legal field and beyond. On a smaller scale, a race-conscious approach involves directly referencing an individual's race or nationality rather than labeling them a "Person of Color." On a larger scale, it entails ongoing legal research and language development to identify a solution that does not pose challenges in complying with the spirit of the Equal Protection Clause under the Fourteenth Amendment.

A. Genesis of "People of Color"

Like affirmative action, the term "People of Color" was created to foster inclusivity and diversity. Specifically, Black leaders played an active role in advocating for the utilization of the term "People of Color," deeming it more favorable for describing individuals of Black ethnicity during earlier periods.[59] The digital archives of four major mainstream newspapers and three major Black newspapers demonstrated this by revealing that major Black newspapers used "People of Color" more frequently than their counterparts.[60] Approved in 1810, the Act to prohibit the importation of Slaves into any port or place within the jurisdiction of the United States could be seen as one of the first times the phrase "People of Color" was used.[61] "It shall not be lawful to import or bring into the United States or the territories thereof from any foreign kingdom, place, or country, any negro, mulatto, or person of color, with intent to hold[.]"[62] This was also one

56. Khiara M. Bridges, *The Many Ways Institutional Racism Kills Black People*, TIME (June 11, 2020, 6:31 AM), https://time.com/5851864/institutional-racism-america/.

57. *Ethnic and Racial Minorities & Socioeconomic Status*, AM. PSYCH. ASS'N (2017), https://www.apa.org/pi/ses/resources/publications/minorities.

58. Rachelle Hampton, *Which People?*, SLATE (Feb. 13, 2019, 5:13 PM), https://slate.com/human-interest/2019/02/people-of-color-phrase-history-racism.html.

59. Efrén Pérez, *'People of Color' Are Protesting. Here's What You Need to Know About This New Identity.*, WASH. POST (July 2, 2020, 6:00 AM), https://www.washingtonpost.com/politics/2020/07/02/people-color-are-protesting-heres-what-you-need-know-about-this-new-identity/.

60. *Id.*

61. Act of Prohibiting Importation of Slaves of 1807, Pub. L. No. 9-22, 2 Stat. 426.

62. *Id.*

of the earliest times "People of Color" was used by the Court.[63] In this context, POC was used to describe Black people. However, the definition of POC changed over time and from state to state. For example, Kentucky, Maryland, Mississippi, North Carolina, Tennessee, and Texas all define "People of Color" as a person who is a descendant of a Black person to a third generation.[64] Whereas Alabama defines POC as an individual with Black in its genetic blood for five generations.[65]

Traditionally, "People of Color" has been used to refer only to people of African heritage in the U.S.[66] Now, it covers everyone who is not white, including Asians, Pacific Islanders, Latinos, and Native Americans.[67] Large-scale surveys have shown that the label POC was created for Black people.[68] The discussion frequently fails to acknowledge individuals encompassed by the term "People of Color" possess the ability to embrace various identities, which still classify them as a person of color.[69] This, in turn, promotes unclarity among the groups. The definition of "People of Color" was altered to conform to more complex identities for individuals; it also implies a relationship between the ethnic minority groups.[70] The phrase POC exemplifies the image of uniformity among ethnic minority groups. Yet, there is a power imbalance among the groups that favors none but poses a disparity against Black individuals. The use of "People of Color" is not a novel concept. Americans used the phrase to define a diverse pool of individuals whose communities did not view them as "white."[71] This spawned an umbrella term for non-white individuals.[72]

B. Using "People of Color" Is a Disservice to Different Identities That Are Grouped Together

As of July 1, 2023, the Census estimates that 58.9% of individuals in the United States are white, not counting Hispanics or Latinos.[73] For decades, white Americans have struggled to recognize where Asians, Arabs, Latinx, Indigenous people, and other minorities should be placed.[74] The list of racial identities is not exhaustive, and nationalities and ethnicities widen that list. Nevertheless, the racial identity lists typically include Black, Asian, Native American, Hawaiian, Pacific

63. The case The Brigantine Amiable Lucy v. United States, 10 U.S. 330 (1810) was the first time SCOTUS used the phrase "People of Color."

64. Malesky, *supra* note 5.

65. *Id.*

66. *Id.*

67. *Id.*

68. Pérez, *supra* note 59.

69. *Id.*

70. Malesky, *supra* note 5.

71. Milteer, *supra* note 55.

72. Paul Starr, *The Re-Emergence of "People of Color"*, 20 DU BOIS REV. SOC. SCI. RSCH. RACE 1, 1 (2023).

73. *QuickFacts*, U.S. CENSUS BUREAU (July 1, 2023), https://www.census.gov/quickfacts/fact/table/US.

74. E. Tammy Kim, *The Perils of "People of Color"*, NEW YORKER (July 29, 2020), https://www.newyorker.com/news/annals-of-activism/the-perils-of-people-of-color.

Islander, and Hispanic/Latino.[75] People who identify with one of the racial identities on the list are unique from the way that they speak to the way that they live.

The use of the phrase "People of Color" can be seen as a disservice to the ethnicities that are often grouped under this umbrella term. Each ethnicity and race carry their unique cultural heritage, experiences, and story, contributing distinct characteristics that are vital to the progression of society. Reducing diverse communities to a single collective term oversimplifies the complexities of their identities and can lead to the eradication of unique achievements, contributions, and struggles. By combining these distinct groups with a collective term, we risk overlooking the diversity and the unique perspectives each community brings to the table.

Celebrating the individuality of ethnicities and races is crucial for fostering a society that embraces differences and promotes inclusivity. Instead of merging groups under a broad label, acknowledging and appreciating the unique attributes of each community allows for a more nuanced understanding of the challenges they face and the contributions they make. Embracing the diversity within "People of Color" not only recognizes the value of each ethnic background but also paves the way for collaborative efforts that leverage the strengths and talents inherent in their unique experiences. These identities need to be isolated and emphasized individually rather than being grouped. If the consistent use of "People of Color" escalates, we can anticipate the difficulties society will find in unblurring the line of distinctiveness between these individuals.

> [U]sing *people of color* when discussing the history of chattel slavery or police brutality flattens the specificities of anti-black racism in America. Using *people of color* when referring to the genocide of native and indigenous people in America obfuscates particular histories of colonial violence. Suggesting that newsrooms or corporate boards need to hire more people of color when there are specifically no Latino people or Southeast Asians on the payroll suggests that any nonwhite person will do, that we are all the same and bring the same experience to the table.[76]

The simple fact is we are not all the same. This does not mean there are not any resemblances between the differing groups. However, there are distinct layers to the separate injustices and issues that each identity faces.[77] The Civil Rights Act of 1964 prohibits discrimination based on "race, color, religion, sex or national origin in employment practices."[78] The discrimination Black people currently face is not the same as the discrimination Indigenous and Hispanic people continue to face. Using "People of Color" when speaking about those issues does not direct specificity to the different communities.[79] Some "People of Color" have never

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75. *See generally QuickFacts*, *supra* note 73.

76. Hampton, *supra* note 58.

77. Nadra Widatalla, *Op-Ed: The Term 'People of Color' Erases Black People. Let's Retire It*, L.A. TIMES (Apr. 28, 2019, 3:15 AM), https://www.latimes.com/opinion/op-ed/la-oe-widatalla-poc-intersectionality-race-20190428-story.html.

78. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 (e-2)-(e-3) (2024).

79. Hampton, *supra* note 58.

faced the same amount of oppression as another person of color. Creating the impression that everyone is under the same umbrella is a problematic ideology.[80]

C. The Phrase "People of Color" Erases Black Issues and Creates the Idea That Saying "Black" Is Impolite

Instances of institutional racism that Black individuals face include health disparities, racial covenants in property, and a continuance of overlooking in many realms within society such as beauty standards. "Black people have higher rates of disease, hypertension, diabetes, lung disease, asthma, and obesity, among other illnesses."[81] The racial disparities in Black people's health can be linked to the resources that were never allocated to Black individuals.[82] The idea of being displaced to neighborhoods that are not safe or where gyms are not sufficient make it easier for the quality of Black peoples' health to collapse quicker than their white counterparts.[83] Restrictive covenants in property have always been a way to displace Black individuals and force them to aggerate in specific locations.[84] Even though it was found to be unconstitutional under the Equal Protection Clause, it was still a common practice.[85]

1. The Phrase "People of Color" Erases Black Issues

The "one size fits all" outlook towards diversity silences the needs of the most vulnerable.[86] All Black people are "People of Color" but not all "People of Color" are Black people. Using "People of Color" not only groups all non-white individuals in the United States but also fails to capture the disparate harm to Black individuals.[87] The notion of a power imbalance between racial and ethnic groups is a complex issue varying across distinct circumstances. Specifically in the United States, historical and systemic factors have contributed to the disparities in opportunities, power, and advantages for Black people.[88] The connection of that disparity routinely relates to the chronicles of slavery, segregation, and discriminatory guidelines that have excessively affected Black communities. Even the slightest requirements for job opportunities, which seem race-neutral to the naked eye, invoke the impact of history and increase the likeliness of a disparate outcome.[89] Some tactics are more so blatantly against Black individuals than race-

80. N. Jamiyla Chisholm, *What's the Right Term: POC, BIPOC, or Neither?*, YES! MAG. (Oct. 8, 2020), https://www.yesmagazine.org/social-justice/2020/10/08/poc-bipoc-or-neither.

81. Bridges, *supra* note 56.

82. *Id.*

83. *Id.*

84. *See generally* Shelley v. Kraemer, 334 U.S. 1 (1948) (illustrating numerous property regulations put in place affecting Black people).

85. *See generally id.*

86. Widatalla, supra note 77.

87. Kim, *supra* note 74.

88. RICHARD ROTHSTEIN, THE COLOR OF LAW 10 (Liveright Publishing Corporation, 2017).

89. Griggs v. Duke Power Co., 401 U.S. 424, 436 (1971) (holding an employer who required a diploma or passing an intelligence test as a condition of employment violated the Civil Rights Act).

neutral, such as using a seniority system maintaining the effects of discrimination.[90]

As for the fashion and beauty industry, Black women have always been rejected by mainstream beauty culture.[91] The beauty industry has a long history tarnished by systemic racism and biased standards of beauty that have disproportionately excluded Black women. For years, the facial characteristics of Black women were unjustly deemed outside the realm of conventional beauty, influenced by historical prejudices and harmful comparisons with predominantly white ideals.[92] The industry's attempts to incorporate "People of Color" did not adequately address the unique experiences and features of Black women, as they continued to be marginalized and overlooked. For example, a fashion diversity column reported that one out of every three models in a 2018 fashion advertisement were "women of color."[93] Yet, the magazine covers consisted more of non-Black women of color while the terms "non-white" and "women of color" were used interchangeably to push the idea that it was diverse.[94] Despite the gradual acknowledgment of diversity, Black women are often left out of the evolving beauty standards, reinforcing the persisting conception that their facial characteristics do not align with the established norms. The term "People of Color" is meant to be diverse but for many Black individuals, it aids in leaving Black people behind.[95]

2. The Phrase "People of Color" Creates the Idea That Saying "Black" Is Impolite

This is not to say that the phrase should not exist at all. There will be circumstances where the phrase is the most accurate wording to use, such as "when discussing the need for diversity in the largely white publishing world."[96] This is an area where the grouping of non-white individuals with the phrase POC assists the whole group by achieving the one goal of promoting diversity. Some Black individuals have noticed that POC has become a shorthand for white people who are uncomfortable with saying "Black."[97] The use of the phrase "People of Color" when referring to Black individuals can inadvertently contribute to the perception that mentioning the term "Black" is impolite or uncomfortable. By avoiding the direct acknowledgment of "Black," there is a risk of creating an atmosphere where discussing race becomes taboo or potentially offensive. Even saying the terminology African American instead of Black is more favorable towards their white

90. *See* Int'l Bhd. of Teamsters v. United States, 431 U.S. 324, 344 (1977) (explaining how an employee who transferred to a different, preferred position risked forfeiting all competitive seniority accumulated in his previous bargaining unit).

91. Germine H. Awad et al., *Beauty and Body Image Concerns Among African American College Women*, 41 J. BLACK PSYCH. 540, 540-41 (2015).

92. *Id.*

93. Widatalla, *supra* note 77.

94. *Id.*

95. *Id.* 4.

96. Hampton, *supra* note 58.

97. Damon Young, *The Phrase "People of Color" Needs to Die*, GQ (Aug. 19, 2020), https://www.gq.com/story/author-damon-young-on-bipoc-phrasing.

counterparts.[98] People who are not Black tended to struggle with finding the braveness to say "Black."[99] The connotation each of the words carried was surprising. This was displayed in a fictional crime experiment setting:

> Whites showed more negative emotions toward a suspect when they read that a black male suspect "was found running east on Lake Street" than when the same suspect was described as African-American. Participants showed their emotional response by indicating how "warm" or "cold" they felt toward the suspect on an interactive thermometer.[100]

Embracing open and respectful conversations about racial identities, including using specific terms such as "Black," is essential for dismantling stigmas, and addressing racial issues head-on. Issues such as the representation of Black individuals in the local media is shown below.

> Using analytic word count software, we evaluated hundreds of crime reports in major newspapers from 2000 to 2012. We created a custom dictionary to measure the presence of the terms African-American and Black, as well of the presence of over 300 negative emotion words (e.g. violent, hatred, and enemy). The use of the term Black was positively associated with a negative emotional tone in an article. We found no such impact for the use of the term African-American.[101]

It is crucial to recognize that using the term "Black" can be both respectful and empowering when employed within the appropriate context, recognizing the unique experiences, history, and culture of Black individuals. We cannot allow the use of the phrase to become a principle simply because some individuals are too uncomfortable with blackness and addressing Black people as such.[102] Racial labels cannot account for discrimination in the world, but it is imperative to note there would be a difference if people did not assign different connotations to similar words that have the same definition.[103]

> There's no question that the move toward the "people of/with x" formulation was meant to confer humanity onto those who have been dehumanized. But now, it's increasingly apparent that the communities this linguistic shift was supposed to dignify might no longer be the primary beneficiaries of it.[104]

The main way to reframe this mindset is by getting rid of hiding behind the language we use and straightforwardly saying the words that we mean.[105] "Say

98. Erika Hall, *Whites View the Term "African-American" More Favorably than "Black"*, WASH. POST (Nov. 18, 2014, 10:01 AM), https://www.washingtonpost.com/news/wonk/wp/2014/11/18/whites-view-the-term-african-american-more-favorably-than-black/.

99. *Id.*

100. *Id.*

101. *Id.*

102. Hampton, *supra* note 58.

103. Hall, *supra* note 98.

104. Hampton, *supra* note 58.

105. *Id.*

Black if you mean Black."[106] In the creation of diverse and inclusive spaces, the impact of language becomes paramount, as it sets the tone for fostering equity and ensuring equal protection for everyone. The use of words shapes narratives surrounding various identities, and employing inclusive language actively dismantles barriers and fosters a sense of belonging. Through conscious language choices, we can challenge systemic biases, address historical injustices, and affirm the equal worth and dignity of all individuals. In legal contexts, the use of language plays a crucial role in upholding principles of equal protection under the law, emphasizing fairness, and combating discrimination. Choosing words that respect and embrace diversity actively contributes to developing environments where everyone is afforded equal rights, representation, and opportunities, ultimately creating a more just and inclusive society. If we continue using language in a nondirected and lax way, its impact becomes lax with no direction.

D. "People of Color" Advances Racial Prejudice in the Legal Field

As a Black woman growing up in a geographical area with a substantial presence of Latinos, I had to learn how to distinguish myself and actively seek acknowledgment. I graduated from South Broward High School, where Latinos constituted the highest non-white ethnic percentage, accounting for 45% of the total population.[107] My high school experience closely mirrors my law school experience, with individuals often choosing indirect ways to convey their thoughts or opinions to me. Throughout my high school years, I observed my peers using the term POC interchangeably with "Black." This pattern became particularly evident in my tenth-grade U.S. history class, where I found myself among only four Black students. In the context of discussing the history of slavery in the U.S., one classmate remarked, "[t]he American government has subjected people of color to so much racist discrimination." While not inherently incorrect, the moment called for a focus on "Black" history, not a broader category. The subtle shift in language blurred the specific issues affecting me as a young Black girl, reinforcing a sense of being treated separately despite sharing educational spaces. This use of the phrase inadvertently brought to mind the historical concept of "separate but equal."[108]

1. The Law School Issue

Fast forward seven years to my law school experience, and I find the use of the phrase "People of Color" persists in classroom discussions. Classmates continue to employ this term when addressing issues specific to various racial and ethnic groups. Even as I write this article, interactions with friends reveal a hesitancy to use "Black" when it is appropriate, with some opting for the umbrella term POC. A recent conversation about maternal mortality rates in the United

106. Kim, *supra* note 74.

107. *South Broward High School Profile*, S. BROWARD HIGH, https://www.browardschools.com/Page/58597 (last visited Oct. 16, 2024).

108. Plessy v. Ferguson, 163 U.S. 537, 552 (1896) (Harlan, J., dissenting).

States serves as a prime example. When I expressed my concerns as a Black woman, a friend responded with, "[y]eah! This is such a huge issue that affects 'women of color.'" The stark reality is that the pregnancy mortality rate for non-Hispanic Black women in 2021 was 2.6 times the rate compared to white and Hispanic women.[109] This instance raises the question: which women of color was my friend referring to? The persistent use of POC in such contexts obscures the unique challenges faced by Black individuals and contributes to a broader issue of erasure within discussions of racial disparities.

2. The Courtroom Issue

In high school, the use of the term POC may not appear to be a significant concern. However, in law school, this habit takes on a greater consequence as it shapes future legal professionals who will hold access to influential and critical platforms. Legal professionals including lawyers, judges, and politicians, wield language that can sway mass public opinions. Law students who habitually use POC in their daily discourse, perhaps without a full awareness of its problematic implications, are destined to become legal professionals who consistently use POC within the legal field. The impact of this linguistic choice extends beyond personal expression, rather it influences societal perspectives and reinforces patterns of language that warrant careful examination within the legal profession.

Plessy v. Ferguson determined that our judicial system is "color-blind."[110] However, being "color-blind" produces the same results of implicit biases. One of the main goals in the U.S. is a judicial system where "[t]he law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved."[111] But maybe the law should take account of one's color if it will create a more race-conscious approach. Recognizing one's race is essential in the legal field as it promotes transparency and prevents the concealment of underlying intentions or meanings. *Jamison v. McClendon* serves as a model where the judge, a prime representative of the legal field, did not hide behind what they truly meant in their case.[112] In *Jamison*, a Black man was stopped by a white police officer for a total of an hour and fifty minutes so the officer could search his vehicle for narcotics; nothing was found after the search was completed.[113] The court noted:

> Clarence Jamison wasn't jaywalking. He wasn't outside playing with a toy gun. He didn't look like a "suspicious person." He wasn't suspected of "selling loose, untaxed cigarettes." He wasn't suspected of passing a counterfeit $20 bill. He didn't look like anyone suspected of a crime. He wasn't mentally ill and in need of help. He wasn't

109. Donna L. Hoyert, *Maternal Mortality Rates in the United States, 2021*, NAT'L. CTR. FOR HEALTH STATS. 1 (Mar. 2023), https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2021/maternal-mortality-rates-2021.pdf.

110. *Plessy*, 163 U.S. at 559 (Harlan, J., dissenting).

111. *Id.*

112. *See generally* Jamison v. McClendon, 476 F. Supp. 3d 386 (S.D. Miss. 2020) (showing how the judge used "Black" in places where it would have been fairly accurate to use "POC").

113. *Id.* at 392-95.

> assisting an autistic patient who had wandered away from a group home. He wasn't walking home from an after-school job. He wasn't walking back from a restaurant. He wasn't hanging out on a college campus. He wasn't standing outside of his apartment. He wasn't inside his apartment eating ice cream. He wasn't sleeping in his bed. He wasn't sleeping in his car. He didn't make an "improper lane change." He didn't have a broken tail light. He wasn't driving over the speed limit. He wasn't driving under the speed limit. No, Clarence Jamison was a Black man driving a Mercedes convertible.[114]

Judge Carlton W. Reeves could have opted for POC instead of "Black man," and his statement would have retained its potency. Explicitly identifying this as a "Black" issue, rather than a POC issue, represents a crucial step towards accurately diagnosing the problem of police brutality. On the other hand, there are occurrences where legal representatives are part of the problem and do nothing to aid in fixing it. At least one justice on the Alabama Supreme Court believed that racialized language in an attorney's brief was inappropriate because they capitalized "Black" and not "white."[115] They were not aware that the alteration in that example was "to acknowledge that slavery 'deliberately stripped' people forcibly shipped overseas 'of all other ethnic/national ties.'"[116] If we capitalize Asian, South Asian, and Indigenous, then 'Black' should also be capitalized.[117] In the past, the Alabama Supreme Court used "colored people" in their cases to define non-white individuals.[118] This approach to language contradicts the principles of the Equal Protection Clause, as it generates outcomes incongruent with what the Equal Protection Clause intends to prevent.

Attorneys may employ the term "People of Color" when referring to their clients for various reasons. This choice may stem from a desire to convey a more expansive understanding of diversity, emphasizing that their client's experiences encompass a range of racial and ethnic identities. Additionally, using this phrase could be a strategic move to mitigate potential biases within a jury, shaping the narrative in a manner that resonates with the jurors. When advocating for Black clients, historical patterns in the criminal justice system have resulted in a disproportionate incarceration rate, harsher sentencing, and a tendency for them not to receive the full advantages of justice in their cases.[119] It makes sense for attorneys to try their hardest to find a strategy that saves their clients' lives. Some lawyers may even believe that employing this phrase helps steer clear of stigmatized terms and stereotypes.

Nonetheless, it is crucial to note that the legal profession places a high value on fair and unbiased representation, and language choices within legal contexts

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114. *Id.* at 390-91.

115. Hudson v. Ivey, 383 So.3d 636, 644 (Ala. 2023) (Mitchell, J., concurring).

116. Mike Laws, *Why We Capitalize 'Black' (and Not 'white')*, COLUM. JOURNALISM REV. (June 16, 2020), https://www.cjr.org/analysis/capital-b-black-styleguide.php.

117. *Id.*

118. *See* Anderson v. Doe *ex dem.* Maced. Baptist Church, 20 So.2d 777, 779-80 (Ala. 1945).

119. *See generally* McCleskey v. Kemp, 481 U.S. 279 (1987) (deeming the statistical evidence introduced to show racial bias was included in a sentencing determination not enough to overturn the decision).

should consistently adhere to these ethical principles. Heightened scrutiny of lawyers applies when they mention race to appeal to the jury's implicit bias.[120] If attorneys employ language deliberately designed to cater to the biases of the jury, it ought to be considered a form of misconduct. For example, an attorney can use "Person of Color" when talking about their Black client to sway the jury's bias in their favor. Biases lead jurors to associate the category "Black" with guilt.[121] When implicit biases are activated, it is easier for jurors to misremember case facts in a racially prejudicial way.[122] In the context of the courtroom, this may allow juries to disassociate with the fact that the client is "Black," but instead a "Person of Color." While this mindset assists with the current case an attorney has before them, it will continue to fuel the racial biases that run rampant in the legal field. If attorneys feed into this method of using POC instead of "Black," it will cater to the racial prejudice that is present in the legal field by allowing the jurors to continue to stealthily act on their implicit biases, without ever being aware. If courts determine that explicit discrimination in jury selection is unconstitutional,[123] it should logically follow that employing language as a tool for discrimination contradicts the same ethical responsibilities inherent in the role of an attorney.

Furthermore, there are situations where the inadvertent grouping of identities by "People of Color" made it difficult to define who fell under the umbrella. For instance, some aggerate Indians, Pakistanis, and Middle Easterners together with East Asians.[124] This makes it difficult for people to discern which of the ethnicities are currently present. For example, in *People v. Ortega*, the court struggled to understand which groups are considered under the phrase "People of Color."[125] In this case, the Defendant was convicted of sexual assault.[126] The victim was a white woman, while the Defendant was referred to as a "Black" man with a common Hispanic last name.[127] The prosecution was actively screening jurors when the discussion of race and ethnicity emerged.[128]

> THE COURT: You are saying, people of color. What do you construe his ethnicity to be, is my question to you?
> MR. RODRIGUEZ: I don't know what the ethnicity is.
> THE COURT: What do you think?
> MS. GROVES: I assume somewhere in Middle Eastern [sic], based on Hakim.

120. State v. McKenzie, 508 P.3d 205, 210 (Wash. Ct. App. 2022).

121. S*ee generally* Justin D. Levinson et al., *Guilty by Implicit Racial Bias: The Guilty/Not Guilty Implicit Association Test*, 8 OHIO ST. J. CRIM. L. 187 (2010) (exploring how Black individuals are seen in the justice system).

122. Justin D. Levinson et al., *Devaluing Death: An Empirical Study of Implicit Racial Bias on Jury-Eligible Citizens in Six Death Penalty States*, 89 N.Y.U. L. REV. 513, 552 (2014).

123. *See* Batson v. Kentucky, 476 U.S. 79 (1986) (finding an attorney's jury selection tactic to be unconstitutional because it discriminated against the jury panels).

124. *See* Fisher v. Univ. of Tex. at Austin, 644 F.3d 301, 304 (5th Cir. 2011) (Jones, J., dissenting).

125. *See* People v. Ortega, 57 Misc. 3d 631 (N.Y. Sup. Ct. 2017).

126. *Id.* at 632.

127. *Id.* at 633.

128. *Id.* at 635.

> MR. RODRIGUEZ: Could be Indian.
> THE COURT: I am not sure that people of color, in other words, people from the Middle East, Hispanic or black are a cognizable group. Is that the group you are saying should be—
> MR. RODRIGUEZ: I am making a notation.
> THE COURT: This is important. I think I am asking you what group you are identifying as being the challenged group. In other words, you are saying people of color, being anyone from the Middle East, are considered in this category?
> MR. RODRIGUEZ: Why not?[129]

Ortega shows that the definition of "People of Color" is blurred and makes it difficult to decipher which specific ethnicity the issue affected. This confusion is a common occurrence in the legal field, potentially diverting the court's attention away from important legal issues. Attorneys may waste valuable time attempting to describe their clients or jury members, diminishing their ability to advocate effectively and impeding their progress in performing their legal duties.

While legal professionals may have a harder time representing their Black clients against the racially discriminatory fueled cases that tend to be stacked against them, figuring out other methods that do not cater to the jurors' implicit bias would be more constructive to the legal field in the long run. The American legal system has constrained the lives of Black people for over 400 years.[130] This was done through statutes, cases, regulations, and the Constitution, all of which were created by language.[131] Understanding the intrinsic link between language and the legal field reveals the significant influence wielded by the choice of words, shaping a field that molds advocates and compels transformative actions.

III. THE SOLUTION TO THE PROBLEM

Courts do not know how to create a society that promotes all identities.[132] This is apparent in many keystone cases, especially one where the idea of "separate but equal" was once a stimulating argument.[133] The Constitution does not allow courts to prescribe solutions to these issues, as it is not the job of the courts to create these solutions.[134] Instead it is up to the people of society to find the answers themselves and educate the rest.[135] Recognizing that the phrase "People of Color" can be harmful is a crucial first step, but true progress requires active efforts to refrain from using the term in inappropriate contexts. It is not enough to be aware that the words we use have opposite impacts from what we intended. We must diagnose the issues and promote solutions.

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129. *Id.* at 634.

130. Randall Winston et al., *Black Americans and the Law*, BERKELEY L., https://www.law.berkeley.edu/library/legal-research/black-americans-and-the-law/ (last visited Oct. 16, 2024).

131. *Id.*

132. Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 862 (2007).

133. *See* Brown v. Bd. of Educ., 347 U.S. 483, 488 (1954).

134. *Parents Involved in Cmty. Schs.*, 551 U.S. at 862.

135. *Id.*

This approach involves a conscious commitment to choosing language that accurately reflects the nuances of diverse experiences and identities. To work against the casual use of this phrase not only contributes to more precise and respectful communication but also aids in the deconstruction of systemic biases ingrained in language. In the legal field, where precise and unbiased language is paramount, this approach can foster a more inclusive and equitable environment. Actively calling out individuals who misuse the term becomes an essential aspect of reconstructing language norms. By engaging in constructive conversations and educating others on the implications of language choices, we are contributing to a collective effort to reshape the narratives surrounding race and identity. This proactive stance has the potential to create a ripple effect, prompting a shift in mindset within the legal field and society at large. As we collectively abandon the use of language that hides behind vague terms, we move towards a more transparent, just, and inclusive society that values precision and acknowledges the importance of every individual's unique experiences. The remaining section of this Comment will advocate a direct approach, where people should "say what they mean."

This Comment has embraced the framework of "saying what you mean." This essentially means being honest with the words that we use, and the way that we use them. Historically, racist policies were created in higher education to exclude Black students, therefore race-conscious policies were created to balance that racial injustice.[136] In America, the history of discriminatory practices, including segregation and limited access to educational opportunities for marginalized communities, aided in that disparity. Initiatives such as affirmative action were designed to level the playing field, acknowledging the impact of historical injustices on the Black community. Drawing a parallel to the creation of race-conscious policies, it prompts reflection on our ability to develop new language to combat harmful linguistic patterns. Just as we have implemented strategies to rectify historical injustices, addressing present-day language issues requires a deliberate and conscious effort. By recognizing the impact of certain phrases and actively working to construct language that is more inclusive and respectful, we have the potential to reshape societal norms. Like race-conscious policies, adopting language-conscious approaches can contribute to fostering understanding and dismantling harmful linguistic traditions in the legal field, and beyond.

The term "People of Color" closely resembles the term "Colored People."[137] Originally, the phrase POC was not crafted with derogatory intent towards non-white individuals, but the basis of the phrase stems from a derogatory expression. Instead of consistently seeking universally inclusive terms for every non-white group, directly recognizing and acknowledging those specific groups is a better

136. Tiffany Jones & Andrew Howard Nichols, *Hard Truths: Why Only Race-Conscious Policies Can Fix Racism in Higher Education*, EDUC. TR. 4 (Jan. 2020), https://files.eric.ed.gov/fulltext/ED603265.pdf.

137. Vivek Ramaswamy (@VivekGRamaswamy), X (Dec. 12, 2023, 11:02 AM), https://x.com/VivekGRamaswamy/status/1734604579193655743 (demonstrating that "People of Color" is textually related to the term "Colored People").

approach. The term POC can be seen as a substitution, and usually, policies that rely on substitutions are not successful in the goals that they try to achieve.[138]

A possible issue with this approach is the idea that even saying "Black" can be seen as a catch-all approach by some people.[139] A few people do not agree with the approach of using "non-white."[140] They believe it to be defining a person by a negative as in they are "lacking white."[141] To be precise, some people have adopted "Black, Indigenous, People of Color," commonly known as "BIPOC."[142] However, that appears to be a more extensive alteration of POC. The identification of "minority" defines people as lacking "some quality that would place them in the majority category."[143] Labels such as "multicultural communities" can be used to emphasize the differences in cultures. And "racially diverse individuals and communities" avoids the potential of oversimplification of complex issues that come with racial and ethnic identification. All these examples of possible phrases that can be used illustrate that addressing a problem of this complexity will not have a universal resolution.

In the legal realm, adopting a direct approach involves attorneys explicitly stating the race of their clients. It means judges articulating opinions on matters affecting Black individuals using the specific term "Black" instead of opting for more general terms such as POC. Within the legal education sphere, law professors play a pivotal role by heightening awareness around the implications of the phrase POC and advocating for a direct approach in their classrooms. Law students, in turn, are encouraged to use words less rooted in the broader category of POC within the school environment, contributing to a shift in language dynamics. Recognizing that reduced usage of a frequently employed term leads to its gradual disappearance, this direct approach fosters a heightened awareness of the issues associated with POC and encourages individuals to explore more accurate and equitable language. This heightened awareness serves as an incentive for academics, advocates, and researchers to delve into finding terminology that aligns more accurately with the principles of "equal under the law" as envisioned by the Equal Protection Clause of the Fourteenth Amendment. By actively engaging in this exploration, individuals contribute to the ongoing discourse on language precision within the legal field, aiming to foster an environment that upholds principles of fairness and equity.

CONCLUSION

The phrase "People of Color" was created for the remedial purpose of being inclusive in a civilization that does not have much history of being inclusive. This inclusivity goal inadvertently led to the adoption of shorthand, allowing individuals to use the term POC without fully grasping the complexities it carried. The

138. Jones & Nichols, *supra* note 136, at 5.
139. Malesky, *supra* note 5.
140. *Id.*
141. *Id.*
142. Milteer, *supra* note 55.
143. Hampton, *supra* note 58.

use of this phrase resulted in issues such as lumping diverse identities under a single umbrella, unconsciously erasing specific issues faced by the Black community, and propagating the very racial prejudices it sought to rectify or conceal in the legal field. Whether the intention was to cater to the comfort of some individuals or a genuine belief that POC was the most suitable description for non-white individuals, it is imperative to prioritize the use of words that communities specifically identify with. Avoiding linguistic tiptoeing and embracing directness in expressing our thoughts about identities that are not white cultivates clearer communication.

Similar to affirmative action, initially created for remedial purposes, there may come a time when the phrase "People of Color" undergoes reevaluation. Acknowledging that the evolution of language and societal norms takes time, it is crucial for our legal field's advancement. This process allows for improved representation and sets the groundwork for transformative linguistic changes. Language, being a powerful tool, significantly influences societal perceptions. Retiring the phrase POC within legal discourse holds the potential to significantly benefit the legal community by fostering more precise and inclusive language. Embracing direct and specific terminology that accurately identifies different racial and ethnic groups will contribute to dismantling the ambiguity associated with broad categorizations. This shift aligns with the principles and spirit of the Equal Protection Clause under the Fourteenth Amendment, as it promotes a more nuanced understanding of individual experiences and challenges. By abandoning the use of a catch-all term, legal institutions can actively work towards ensuring equal protection under the law, acknowledging the unique struggles faced by each community. This linguistic evolution can lead to more equitable legal practices, where individuals are seen and treated as distinct entities, reinforcing the commitment to fairness and justice enshrined in the Constitution.

While it might take time for a definitive solution to emerge, the ongoing discourse on linguistic precision is essential for the betterment of our legal landscape and society at large. It is time to retire the phrase "People of Color."[144]

144. Widatalla, *supra* note 77.