**Affirmative Action’s Greatest Triumph:**

**The Brazilian Supreme Court Decisions of 2012**

In April 2012, the Brazilian Supreme Court decisions made history when it unanimously affirmed the constitutionality of affirmative action in higher education on the basis of race. This bold position adopted, for the very first time, by Brazilian stands in stark contrast to the divisions manifested six months later in the oral arguments before the U.S. Supreme Court for the Fisher v. University of Texas case. In a country historically averse to race specific discourse, the two Brazilian supreme court cases on affirmative action originated in a September 2009 filing by a Senator from the conservative “Democrats Party” (DEM) specifically opposing the decision of UnB to adopt race as a basis for admissions quotas as a violation of equal protection. It was backed by a manifesto entitled “Public Letter to the National Congress: All have Equal Rights in the Democratic Republic” and a public controversy ensued in which other manifestos and court briefs were filed in favor of quotas.

When the decision was reached, the news was carried in the *New York Times*, the BBC, and the rest of the international press precisely because of the surprising margin of victory for the defenders of affirmative action. The Brazilian Supreme Court justices not only ruled in favor of racially-targeted programs, unanimously in the case of the University of Brasilia (UnB) but held to a similar decision--with only one dissent--in the case of the fellowship support Program Universidade para Todos (Prouni). For those who know Brazil, the decision reflected the rapidity of change within a country that has never experienced legally-sanctioned discrimination but whose national mythology has embraced the idea of a Brazilianess transcending race within a country that is, by the its very nature, anti-racist (in the U.S. sense).

Thus, it is striking that the leading decision by Judge Ricardo Lewandowski began by rejecting the “biological notion of race” but acknowledged “the reduced number of *negros* or *pardos* who exercize high posts” in Brazil due to “camouflaged or implicit discrimination that still exists in the shadow of a complacent State.” As Brazil’s Chief Attorney told the court on 30 July, 2009:

“Thus it should be noted that the […] principle of equality does not mean that individuals should be treated identically in any and every situation; on the contrary, the realization of equality demands, in certain cases, different types of legal treatment for people who are unequal – like, for example, that which occurs with so-called ‘affirmative action.’”

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**Team members**: Dr. Bryan Pitts (Duke 2013) working with Dr. John French identified downloaded all of the documentation regarding this historic decision, including the four written opinions, the verbal comments recorded from the session by other Justices, legal documents filed the Brazilian government officials, as well as the original legal appeal against affirmative action. In addition, an archive consisting of well over amicus curiae briefs from NGOs, political parties, and individuals staking out opinions pro and against.

**Global Brazil Project**: Graduate student Gray Kidd will be working with Dr. French to recruit undergraduates to make this material available, properly labelled and summarized, as a searchable web data base that scholars, activists, and policy makers can draw as we consider the truly global dimensions of affirmative action at appoint where U.S. Supreme Court decisions in 1978, 2003, and 2013 have increasingly rejected the measures that higher education can take to address historical inequalities by race, ethnicity, and social class.