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The Rise and Fall of Affirmative Action

With a lawsuit against Harvard, Asian-American activists have formed an alliance with a white conservative to change higher education.

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In 2012, Michael Wang, a senior at James Logan High School, in the Bay Area, was confident that he had done enough to get into one of his dream schools: Harvard, Yale, Stanford, and Princeton. He had the kind of G.P.A.—4.67—that looks like a typo to anyone older than thirty-five. He had aced the ACT and placed in the ninety-ninth percentile on the SAT. But Wang didn't want to be seen merely as a bookworm—he was an accomplished member of the speech-and-debate team, and he had co-founded his school's math club. He played the piano and performed in a choir that sang with the San Francisco Opera, and at Barack Obama's first Inauguration.

The following spring, Wang was rejected from all the Ivy League universities he had applied to, except the University of Pennsylvania. (He made the wait lists at Harvard and Columbia, but was eventually turned down at those schools, too.) He was devastated, and wondered what more he could have done. Then he started thinking about all the impediments that no amount of hard work could overcome. Some of his classmates who had got into these schools, he thought, had less impressive credentials than his. But they were Hispanic and African-American. Had he been rejected because he was Asian?

Wang had always been told that Asian students in America were held to higher standards than everyone else. When he was young, his parents suggested that, if he wanted to go to a school like Harvard, he would have to outwork other Asian students. Swearing off television became a competitive advantage. In high school, his friends, who were predominantly Asian, believed that their race would work against them in the admissions process. Wang knew students whose families were mixed Asian and white who identified themselves as white on their applications, lest they be lumped in with all the other overachievers. The Princeton Review has, in the past, encouraged students of Asian descent to try to conceal their cultural identity. There are admissions-counseling companies, like Asian Advantage, in the Bay Area, that help students

strategize their extracurricular activities (less piano and tennis), and others, like Ivy Coach, based in New York City, that promise to make students “appear less Asian” in their application materials.

Wang found this notion troubling. “How are you not supposed to be proud of who we are?” he asked me, in August, when I met him for lunch in San Francisco, where he works as a paralegal. His office is in the financial district, on the border of Chinatown. As we walked a few blocks to get noodles, passing from one San Francisco into another, he recounted his story.

In 2013, Wang began talking to family friends familiar with the law about his options. That June, he filed a discrimination complaint against Yale, Stanford, and Princeton with the Department of Education’s Office for Civil Rights. (He did not include Harvard and Columbia, since he was still on the wait lists there.) At first, he said, he hoped to “reap the benefits” himself—never mind that these schools were unlikely to reconsider an applicant who was trying to sue his way into the freshman class. But Wang came to see the issue as one of fairness, and he thought that perhaps he could help someone in the future. He studied the history of Asian-Americans and college admissions, and eventually came across the work of a conservative activist named Edward Blum, a financial adviser who has devoted his life to overturning race-conscious laws. Blum has shown a talent for pinpointing vulnerabilities in civil-rights law and attacking them in the courts. Wang and Blum spoke on the phone and they agreed to keep in touch. At the time, Blum was heading a nonprofit called the Project on Fair Representation, and was working with Abigail Fisher, a white student who, in 2008, had been rejected by the University of Texas at Austin. The school guaranteed admission to Texas students in the top ten per cent of their high-school class; from those under the threshold, like Fisher, admissions officers chose applicants through a process that considered, among other criteria, race and family background. Fisher sued the university, alleging that this policy was unconstitutional. Blum helped assemble, and cover the bills for, Fisher’s legal team. (The Supreme Court eventually ruled against Fisher, in 2016.)

Blum, and other activists, gave a narrative shape to Wang’s grievance. Asians were being discriminated against in the college-admissions process, and among those taking their spots were the primary beneficiaries of affirmative action, like African-Americans and Hispanics.

Wang’s curiosity about the process has helped launch a chain of events that might ultimately alter the course of civil-rights history. In 2013, as Wang was preparing to go to college—he attended Williams—he was interviewed by officials at the Department of Education. Colleges generally say little about their decision-making processes, describing them as a “secret sauce” that makes each school distinct. (Being vague also protects them from legal liability.) But one of the investigators looking into Wang’s claim confirmed that many Ivy League admissions officers had, in the past, talked stereotypically when evaluating Asian-American applicants. “Oh, typical Asian student. Wants to become a doctor. Nothing special here,” Wang said, paraphrasing what the investigator had relayed to him. (The Office for Civil Rights did not make a judgment in Wang’s case.)

Few people knew about Wang’s complaint until July, 2014, when he wrote an op-ed for the San Jose *Mercury News* describing the “anger” that Asian-Americans felt about being held to unfair standards. Wang’s article and his case were picked up by Chinese-immigrant newspapers and social media. Though Wang professes to be in favor of affirmative action, the most egregious aspects of his story captivated a small but vocal network of Chinese-Americans, who had heretofore shown little interest in American politics. Spurred by WeChat, a Chinese social-media

platform, and encouraged by what they saw as the next great civil-rights struggle, they threw their support behind Wang and other Asian-American students penalized by the college-admissions process.

These activists found an ally in Blum. That November, Blum filed a federal lawsuit against Harvard University. The suit advances a surprising line of argument. Instead of claiming that the process is unfair to whites—an increasingly tough sell, at least in the media—the suit suggests that affirmative action, a mechanism intended to help minorities such as Asian-Americans, is actually being used to harm them. Blum hopes for a college-admissions process in which there would be no race or ethnicity boxes to check, and students would be evaluated more or less anonymously. To bring the suit, Blum created Students for Fair Admissions, a membership organization roughly modelled on the A.C.L.U. and the N.A.A.C.P., which sued the university on behalf of its members, some of whom were students with stories similar to Wang's.

S.F.F.A. alleges that Harvard attempts to curate the racial breakdown of each incoming class. In order to achieve classes that, in recent years, have been roughly half white, twenty per cent Asian-American, fifteen per cent black, and twelve per cent Hispanic, Harvard routinely gives Asian-American applicants—who often excel when it comes to standardized testing, grades, and extracurricular activities—lower marks in the more subjective “personal” category, which includes everything from the student's admissions essay to letters of recommendation and alumni interviews. If S.F.F.A. can prove that Harvard engages in “balancing,” which is illegal, the school could be forced to remove any considerations of race and ethnicity from its admissions process. Harvard maintains that its process is a “whole person review,” in which applicants aren't reduced to a single factor, whether it's academic excellence or their racial and ethnic identity. “We do not discriminate against applicants from any group,” Rachael Dane, a Harvard spokesperson, told me. “I don't use the term ‘balance,’ because we don't balance.”

After the Harvard filing, Blum gave talks at Asian-American community functions, and at any event that would have him. He found people who were eager to join his movement. On October 15th, the U.S. District Court for the District of Massachusetts, in Boston, will begin hearing S.F.F.A.'s suit. The day before, organizers are planning to hold a rally outside the courthouse, to be attended by predominantly Chinese-American anti-affirmative-action activists from throughout the country. (S.F.F.A. has also filed a suit against the University of North Carolina–Chapel Hill, alleging that its race-conscious admissions policy is unlawful, though no trial date has been set.)

This alliance, between a white conservative tactician and a comparatively inexperienced base of recently energized Asian-American activists, has complicated the traditional optics of the civil-rights and diversity debates. Winifred Kao, a lawyer at the Asian Law Caucus, said that Blum was not “a champion for Asian-Americans, by any means.” Rather, he was “using Asian-Americans as a wedge, as we've often been used, throughout our racial and civil-rights history.” Many of Blum's critics point to a video in which he admits that he “needed” Asian plaintiffs to pursue this latest challenge to affirmative action. “I feel that the Asian-American student population and community is being used as a pawn in a chess game, around limited resources in elite sectors of American society,” Prudence Carter, a sociologist and the dean of the Graduate School of Education at the University of California, Berkeley, told me. “I think that the entire world can see that.”

If Blum's suit is successful, the effect will be felt far beyond Harvard. It will limit the freedom that academic institutions have often had in pursuing their unique educational missions. The lawsuit, and Blum's efforts to change the cultural conversation surrounding diversity and discrimination, could end affirmative action in higher education as we know it.

Affirmative action has never been adequately defined. Historians often trace the concept to Franklin Roosevelt's New Deal provisions insuring equal-employment opportunities, regardless of "race, color, or creed." The term first appeared in a policy context in the National Labor Relations Act of 1935, which allowed workers to unionize without fear of retribution. Employers who were found to have discriminated against an employee were required to rehire him, or to make amends, through "affirmative action." Harold Ickes, the Secretary of the Interior under Roosevelt, went one step further, establishing a quota system to insure that Public Works Administration projects employed a fixed percentage of African-Americans. (Many local officials refused to comply.) Throughout the forties and fifties, there was a broad, top-down drive to build fair-employment practices and to integrate institutions like the armed forces and public schools. But the first time the government used the term in relation to race was in March, 1961, when John F. Kennedy signed Executive Order 10925, which required government contractors to "take affirmative action" to help realize the nation's goal of "nondiscrimination." (Hobart Taylor, Jr., a young lawyer who helped draft the order, chose the phrase for its alliterative quality. We could all be debating "positive action" instead.)

The premise of affirmative action was that, for African-Americans, the status quo was innately negative. To act affirmatively was to acknowledge the history of denigration and inequity that continued to define black life, and to come up with ways in which the future could be different. But Kennedy's efforts didn't prescribe any specific remedies. When, a few years later, in a new executive order, Lyndon Johnson reiterated the commitment to affirmative action, he didn't have anything specific in mind, either, though one draft memorandum, dated January, 1964, listed twenty-five possible interpretations, from eliminating segregated smoking areas and cafeterias to publicizing equal-employment policies. (In 1967, Johnson amended his order to ban discrimination on the basis of sex. In the affirmative-action debate, the gains for women in education and in the workplace aren't often considered.)

In the face of government slowness, affirmative action came to be defined by the judicial system. In 1978, the Supreme Court considered a case brought by Allen Bakke, a white man who believed that, if he had been a minority, he would have been admitted to the medical school at the University of California, Davis. Bakke's claim of "reverse discrimination" galvanized the long-simmering resentment that some whites felt in the wake of the civil-rights era. Justice Lewis Powell was the case's pivotal figure; he joined four Justices in striking down Davis's admissions policy, which included a quota for underrepresented minorities. But he joined the other four Justices in upholding affirmative action as permissible under the law, singling out for praise Harvard's admissions system, which regarded race or ethnicity as a "plus" rather than as a determining factor. Unlike his colleagues, who largely supported affirmative action as a corrective to historical injustice, Powell based his decision on the principle of "diversity." This was not the original impulse of the civil-rights movement—the presence of African-Americans at the lunch counter wasn't about enriching the environment of Woolworth's. Powell's compromise changed the terms of affirmative action. Admissions policies could no longer acknowledge the past; they could only advance a more diverse future. Diversity eventually became a self-rationalizing principle, and produced an entire industry of counselling and compliance.

Throughout the seventies, higher education and business were expansive in their duty to act affirmatively—an effort supported by both Republicans and Democrats. But there were also seeds of backlash, which drew on the accusations of reverse discrimination that had animated Bakke’s grievance.

In the early nineties, Glynn Custred, an anthropologist at California State University, Hayward, who had told the *Washington Post* that affirmative action was like “reversed Jim Crow,” met Tom Wood, a Ph.D. recipient who believed that affirmative action was the reason he could not find a professorship. Together, they drafted Proposition 209. Known as the California Civil Rights Initiative, Prop. 209 would ban affirmative action in educational settings. For the first time, American voters were given the chance to weigh in on large-scale affirmative-action policies. Prop. 209 passed in November, 1996.

The effect on the enrollment of people of color was immediate. Between 1995 and 1998, offers of admission to African-Americans at Berkeley and U.C.L.A. declined by fifty-five per cent. Pedro Noguera, a professor of education at U.C.L.A., was a faculty member at Berkeley at the time. “You end up with the University of California at Berkeley or U.C.L.A. looking more like Ole Miss, where most of the black students are athletes, not there for academic reasons,” he told me.

In the following twenty years, a wave of ballot initiatives inspired by Prop. 209 were successful, in Washington, Michigan, Nebraska, Arizona, and Oklahoma. (In addition, affirmative action was outlawed in Florida, through an executive order, and in New Hampshire, through legislation.) In some states, like Texas, California, and Florida, colleges and lawmakers explored other ways to maintain racial diversity, such as considering socioeconomic factors in admissions decisions, or creating programs to guarantee admission to public colleges for the top graduates from each high school. But the most powerful defense of affirmative action came, once again, from the courts. In 2003, the Supreme Court ruled, in *Grutter v. Bollinger*, involving the University of Michigan Law School, and in *Gratz v. Bollinger*, regarding the University of Michigan’s undergraduate-admissions policy, that educational institutions had a compelling interest in promoting diversity. Elise Boddie, a professor at Rutgers Law School, observed that the conservative challengers to affirmative action “keep losing.” “When you have Bakke, the Grutter case, and now Fisher—those are three cases where the Court, over the period of [forty] years, has affirmed the importance of diversity as a constitutional value,” she said.

Cases like these, which involve college admissions, tend to draw headlines. But, in 2007, the Supreme Court made an important ruling in *Parents Involved in Community Schools v. Seattle School District No. 1*. At stake was whether a school district could use race as a “tiebreaker” when assigning students to different campuses, as a way to achieve diversity and avoid what amounted to segregated schools. The Court deemed such attempts at “racial balancing” in educational institutions to be unlawful.

The effect of this back-and-forth has been that we tend to consider affirmative action only in a narrow spectrum of activities. Nearly sixty years after Kennedy’s broad mandate, which arose out of a desire to transform society, our understanding of it—and our wrangling about it in the courts and in the media—has come down to the relatively small issue of school admissions. Even victories for affirmative action establish precedents that draw the circle of acceptable practices ever smaller.

Suspicious about the fitness and the qualifications of nonwhites didn't begin with affirmative action. But it has become the most prominent way that these suspicions are aired, since the stakes are so clear. Life rarely seems so zero-sum as it does when we imagine that we are vying for the lone seat in the classroom.

"Affirmative action is part of a larger struggle," Randall Kennedy, a professor at Harvard Law School, told me. "The much larger struggle is the struggle against the idea that the United States is a white man's country. Do people of Asian ancestry benefit from that larger struggle against the notion that America is a white man's country? Yes, absolutely."

The origins of affirmative action assumed a racial binary of whites and blacks. "Asian-Americans often don't have the opportunity to be complex in mainstream portrayals," Vincent Pan, the co-head of Chinese for Affirmative Action, a San Francisco-based advocacy organization, told me. Stories of academic overachievement came to define how many outsiders understood Asian-Americans. In 1971, *Newsweek* praised Asian-Americans for "out-whiting the whites." This trope of the "model minority" has proved to be a persistent stereotype, a tribute to a community that seems to work hard and complain very little. Michael Wang felt that it was only recently that Asian-Americans, long fearful of rocking the boat, had grown tired of accepting "second best."

This past summer, I met Joe Wei, the managing editor of the *World Journal*, a Chinese-language newspaper with bureaus in New York, San Francisco, and Los Angeles, at a café in Manhattan's Chinatown. Wei, who has a broad face and a gentle but assertive voice, has been a reporter and an editor at the *World Journal* for twenty-six years. The paper is a vital resource for new immigrants, providing information about voting, garbage pickup, and civic rights. "We're helping them become citizens," Wei, who was born and raised in Taiwan, told me. "We help them as a live encyclopedia."

"Let's start here," Wei said, unfolding a napkin and drawing a horizontal line with a pen. He began recounting the history of Chinese people in America, beginning with westward expansion and the gold rush, in the mid-nineteenth century, when an influx of largely poor Chinese immigrants provided cheap, often indentured, labor. They were the ones who founded the Chinatowns. Wei marked a spot on the time line: the Chinese Exclusion Act of 1882, born of xenophobia, which effectively ended Chinese immigration for sixty years. And then, coinciding with the Cold War, another mark on the line: the sixties, as the United States began recruiting talented students, particularly in the sciences and math, from places like Taiwan and Hong Kong. Wei was describing people like my parents, who came from Taiwan in the early seventies, for graduate school. It was no surprise that communities like the one I grew up in were seen as the model minority—our ranks had been selected to come to America and pursue largely untroubled middle-class lives. As the Civil Rights Act of 1964 was remapping the rights of America's minority populations, the Immigration and Nationality Act of 1965, which favored skilled labor, and attracted young science and engineering students from Asia, was reshaping who those minorities were.

Moments of crisis reminded the diverse, far-flung Asian-American community of the need to unify across lines of class, geography, and national origin. Wei added a mark at 1982, the year that Vincent Chin, a young Chinese-American man, was beaten to death in the suburbs of Detroit by two white men. They pleaded guilty to manslaughter, and were given three years' probation

and a modest fine. The lenient verdict prompted outrage and nationwide organizing, and became a turning point in Asian-American politics.

At the nineties, Wei drew a heavy vertical line. After the massacre in Tiananmen Square, in 1989, the United States began welcoming immigrants from mainland China in large numbers. The Chinese Student Protection Act of 1992 provided green cards to nearly fifty-five thousand Chinese nationals, and this influx accelerated in the two-thousands, particularly after the financial crisis spurred a desire for foreign investment. As of 2016, there were an estimated 21.4 million Asians in the U.S., approximately 4.9 million of whom were of Chinese descent. Wei said that the more recent immigrants included engineers and tech workers, among others, with enough resources to move straight to the suburbs. They have arrived at a time when China is ascendant. “They don’t know about Chinese Exclusion,” Wei said. “They don’t know who is Vincent Chin.”

Many of these immigrants can be found on WeChat, which is something like a messaging app combined with Twitter, and was introduced in China in 2011. It quickly became the primary way that Chinese people engage with the digital world. “You turn [off] your WeChat in Beijing airport. Then you turn on in J.F.K., and everything comes on,” Wei said. “You never go out of China, because everything is in WeChat.” In the past few years, researchers have grown concerned about misinformation on WeChat, which has more than a billion users. Chi Zhang, a doctoral student at the University of Southern California’s Annenberg School of Communication, told me about fake stories of Muslim terrorism, lawless sanctuary cities, and schemes to contaminate the blood supply, all designed to stoke fear among Chinese immigrants.

In October, 2013, “Jimmy Kimmel Live!” aired a brief segment that became one of the least likely geopolitical turning points ever. While asking children for their views on some of America’s biggest problems, Kimmel pointed out that China owned much of our debt. What should be done? A six-year-old said that we should kill all the Chinese. Rather than scolding him, Kimmel deferred to a late-night host’s most trustworthy tool: a bemused, knowing grin. The bit went viral in the Chinese media, where an abbreviated, translated version had Kimmel advocating genocide against Chinese people. The *World Journal* picked up the story. Kimmel apologized. The White House eventually had to weigh in, saying that the comments did not “reflect mainstream views of China in the United States.” Vincent Xie, who was inspired by the incident to start a WeChat account called Civil Rights, told me that it didn’t matter if Kimmel was joking. “Would he have made such a joke about African-Americans or Jews?” he asked me, in Mandarin.

Among Chinese immigrants, particularly first-generation ones, the Kimmel segment became part of a story about how liberals in this country took Asian-Americans for granted—“the sense,” Chi Zhang said, “that Chinese-Americans are sacrificed in the left agenda to achieve so-called equality for other minority groups.”

The following year, SCA-5, a bill that sought to overturn Proposition 209 and restore the consideration of race in school admissions, passed in the California State Senate. Polling data suggested that California voters were open to the bill. A survey from 2012 showed that Asian-Americans supported affirmative action by a three-to-one margin. But many Asian-Americans who had rarely participated in grassroots politics began mounting a campaign against SCA-5, which some called “Skin Color Act 5.” A post on a Web site for South Asian professionals called it “the most racist bill in the history of California.” The most fervent activism came from

Chinese-Americans, who used WeChat as an organizing tool. For many lawmakers, unaware of WeChat, or the gateway effects of the Kimmel affair, this loud and aggressive opposition to SCA-5 came as a surprise. Much of the Chinese-American organizing was happening beyond the reach of mainstream media. Activists coordinated mailings to flood politicians' offices, and staged demonstrations dramatizing their plight as an overlooked minority. In March, 2014, SCA-5 was withdrawn.

Yukong Zhao, who lives in Florida, was one of the activists. Zhao arrived in the United States in 1992, and focussed on graduate school in urban affairs and business, finding a job, his visa and citizenship, and family life. He rose through the ranks at Siemens. During the financial crisis, Zhao noticed that many Chinese families had not lost their homes. He began exploring the cultural differences between Asians and everyone else, and self-published a book on the subject in 2013. After the Kimmel incident, Zhao became more engaged. He read about SCA-5, and published an op-ed denouncing it in the *World Journal*. The next year, he started an organization called the Asian American Coalition for Education. Later, the issue came closer to home. He told me that his son had been a victim of discrimination: despite superlative grades and test scores, he was not accepted to a "top" college. "He has a classmate, who is Hispanic—she got admitted by Johns Hopkins but he did not," Zhao said.

Zhao met Edward Blum through a Chinese reporter. "I noticed that when a black kid is wrongfully accused by the police, many African-American organizations stood up behind that kid," Zhao said. "But, when Asian-American children are discriminated, no organizations stood up." The work of conservative activists like Blum helped give context for what Zhao and others were already doing. "Asian-Americans are the most discriminated by this kind of race-based college admissions," Zhao said. "We need to let the American society know our suffering."

Zhao was adamant that they weren't "tools" of Blum. On the contrary, he continued, "the complaints against Harvard really originated in the movement against SCA-5." In 2016, Zhao got more than sixty Asian-American advocacy groups to file complaints with the Department of Justice and the Department of Education, alleging discrimination by Harvard. (The Department of Education dismissed the complaint, but the Department of Justice opened an investigation in 2017. In September, it began investigating Yale's admissions policies as well.)

Though Joe Wei was broadly supportive of people like Zhao, he was apprehensive about what might result from their efforts. He wasn't sure that newer immigrants understood the "history of struggle," or the importance of diverse schools that weren't "one hundred per cent Asian." "I feel like, 'Hey, stop it. Don't push this hard,'" he said. "Because you don't want to ruin everything. After all, we are latecomers. We are new to this country."

In May, 2015, about six months after filing the lawsuits against Harvard and U.N.C., Blum went to the Bay Area to speak to the foundation arm of a small organization called the Silicon Valley Chinese Association. He paid his own way, and talked to a couple of hundred Chinese people curious about his legal strategy. There was a buffet afterward.

Blum believed that he was advancing a strong legal challenge to affirmative action, but he hadn't yet found the kind of popular support that his movement needed. He wasn't going to find it, he said, among his "buddies at A.E.I., Hudson, and Cato," the conservative think tanks. At the time, the membership of Students for Fair Admissions had plateaued at "a few thousand," he told me. After his visit to the S.V.C.A., the group's leaders encouraged its members to spread the word.

Many took to WeChat. Within three days, Blum says, about fifteen thousand people had joined S.F.F.A., crashing the organization's Web site.

Events like these, which went largely unnoticed by the press, began to reshape how Chinese immigrants understood affirmative action. But they confirmed what researchers like Karthick Ramakrishnan, at U.C. Riverside, and Janelle Wong, at the University of Maryland, have found: although Asian-Americans consistently support affirmative action, since around 2012 support among Chinese-Americans has noticeably fallen. Wong believes that the change in Chinese-American attitudes had to do "with the spread of information and misinformation" on WeChat. Although liberal WeChat accounts, like one called Chinese American, have emerged in response to the popular conservative ones, they are outnumbered.

In 2016, OiYan Poon, an assistant professor of higher education at Colorado State University, interviewed thirty-six Asian-Americans who disagreed about affirmative action. She was surprised to find that thirty of them, on both sides of the issue, couldn't accurately explain what affirmative action was. "Quite frankly, the public generally has no goddam clue of how admissions work," Poon said. When asked for their ideal system for a place like Harvard, thirty-three of them essentially described "race-conscious holistic review, which is exactly what we have today." Poon has worked as an admissions-application reader in the University of California system, and she was impressed by Harvard's comprehensive approach, which required each application to be read and vetted by multiple people, and then voted on by a forty-person panel.

"My anxiety about this case is really with folks who think they're allies, and who say they support affirmative action," Poon said. The opponents of affirmative action had so thoroughly dominated the terms of the debate that supporters were often unconsciously perpetuating a distorted vision of what actually happens—repeating claims that Harvard undervalued Asian students' "personalities," for example, an argument that ignores the complexities of the "personal" category. "They're actually parroting some of the points that Ed Blum is making, and it's killing me," Poon said.

Vincent Pan, the co-head of Chinese for Affirmative Action, told me that when he describes affirmative action in terms of employment opportunities, or hiring more Asian-American judges or college faculty, people overwhelmingly support it. He rued how narrow the discussion had become, confined to a few places at the nation's elite institutions. He pointed out that there are more Asian-Americans in San Francisco's community colleges than in all the Ivy League schools combined.

While the Harvard admissions process sucks up the headlines, Asian-Americans have benefitted as much as anyone else from increased opportunities in education, employment, and government service. And the current terms of debate don't capture the full complexity of the Asian-American community. Researchers believe that efforts toward "data disaggregation," or the breaking down of large categories, like Asian-American, into smaller, more descriptive subgroups, could bring increased focus to poor, underserved populations, like Southeast Asians.

The first time I spoke with Blum, he stopped me after I introduced myself and asked that I repeat my name. He wanted to get it right. "I've had a lot of practice over the past three or four years," he said. Blum looks and sounds a bit like a gentler, more affable version of the sports pundit Skip Bayless, with a long face, deep-set, probing eyes, and a slight frown. In 1992, while living in

Houston, Blum ran for Congress as a Republican. As he canvassed, he realized that the district had been drawn in a way that consolidated the black vote. Blum lost the election. He believed that this “racial gerrymandering” violated the Voting Rights Act of 1965, and he, along with fellow-plaintiffs from across Texas, sued the state. The case, *Bush v. Vera*, eventually went to the Supreme Court, which in 1996 struck down Texas’s redistricting plan. Since then, Blum has become known for pairing potential plaintiffs with novel legal strategies. He describes himself as a matchmaker.

Blum is conscious of being cast as a villain. He told me that he had hoped that keeping the plaintiffs anonymous would “unshackle” the conversation, and allow people to discuss the issues of affirmative action or anti-Asian discrimination on their merits. But he has nevertheless become a focal point. His pretrial court filings have provided revealing glimpses into Harvard’s secretive process. A Web site devoted to publicizing the school’s side of the story singles him out by name. Rachael Dane, the Harvard spokesperson, reiterated the school’s position, that this was “a politically motivated lawsuit brought by Ed Blum and the organization he created.” What’s at stake, she told me, isn’t just the school’s admissions policy; it’s the ability of Harvard to pursue its stated mission, to “provide a diverse living environment” to “the citizens and citizen-leaders for our society.”

Blum is confident that his legal team has constructed a compelling argument. He giggled as he described its opening brief, which cites the quotas of the twenties and thirties which kept Jewish students out of Harvard, as being “like a Michener novel,” with “bones in the ground.” “America agrees with us,” Blum told me, referring to a 2016 Gallup poll, conducted in the wake of the Abigail Fisher decision, showing that about two-thirds of Americans disagreed with the Court’s ruling. “Sadly, it’s the courts that have been dragging their feet.” He drew an analogy to gay marriage. “Our nation said, ‘You know, I know a gay couple. I know a lesbian couple. And I like ’em. I’ve gone out to eat dinner with them, they’ve been over to my house. Everybody likes ’em. If they want to get married, fuck, let ’em get married.’ That was a galvanizing moment. How did that happen? The Court didn’t lead America there. America led the Court there. That’s what this movement is about.”

Blum saw the Harvard case as attempting to return to “the original vision of the civil-rights movement,” he said. “The longer this goes on, the more polarizing it becomes for our nation’s fabric. Stopping it restores what the nineteen-fifties and sixties civil-rights movement was all about.” Yukong Zhao had also echoed the traditional language of civil rights, saying that affirmative action was “against Dr. Martin Luther King’s famous words, right? He said, ‘I want my children to be judged by the content of their character, not by their skin color.’ ”

Randall Kennedy, the law professor, said that, in fact, he was “surprised that it took so long” for a legal challenge to involve Asian-Americans. In early reverse-discrimination cases, like *Bakke*, Kennedy said, “many people thought, Gosh, how rich. White supremacy in the United States . . . and now all of a sudden white people are the victims of racial oppression? But now, even better to have a ‘people of color’ victim. In the court of public opinion, this made a lot of sense, and I think it’s been quite effective.”

In late August, Blum returned to the Bay Area to update the Silicon Valley Chinese Association on the case’s progress. His work is funded largely by DonorsTrust, an organization that distributes money from various conservative and libertarian contributors, but he wanted to make smaller, grassroots groups like S.V.C.A. feel empowered as well.

A couple of nights before the event, I visited Alex Chen, the founder of the S.V.C.A., at his house in the serene, recently developed hills of east San Jose. It was almost dinnertime, and I heard various Asian languages as I walked up and down the block, trying to find his house. Chen, who is forty, greeted me warmly. He has a round face, with attentive, constantly blinking eyes, and sprouts of chin hair. He led me to a table in his kitchen, where there were bottles of whiskey and baijiu, and a plate of freshly roasted peanuts. Outside, his two children took a break from their homework to jump on a trampoline.

Chen speaks Mandarin with a lusty Beijing accent, which gives his English a choppy, dramatic rhythm. He came to the United States in 2006, on an H1B visa, to work as a computer-chip designer. (He received a green card in 2013.) Chen's initial impressions were that the air-conditioning in America was magnificent but the roads were poor. He poured most of his free time into skiing, shopping, and, eventually, a sport-fishing club.

He was drawn into Chinese-American issues after seeing the Kimmel clip. As he read about SCA-5 on the Internet, he grew concerned about the effect that repealing Prop. 209 might have on his children, who were just starting school. He felt an obligation to do something; having overseen his fishing club, he thought that he already had some leadership skills. On February 15, 2014, after his family had gone to sleep, he went on MITBBS, a Chinese-language message board for Chinese-Americans, and announced that he was starting the S.V.C.A. We clinked glasses of baijiu and he smiled. "That date is very special to me," he said.

The S.V.C.A. initially comprised about ten people—mostly Chen's fishing buddies and members of his college alumni network—but they began recruiting people outside Chinese grocery stores and community functions. The S.V.C.A.'s tactics were old-fashioned: it encouraged people to send local politicians snail mail, rather than e-mail. The S.V.C.A.'s mailing list grew quickly, even after the defeat of SCA-5. Chen volunteered for local candidates who supported his group's agenda, pointing to the election of the state assemblywoman Catharine Baker, who also opposed SCA-5. Today, there are about eighty thousand people in the group's database.

Another S.V.C.A. leader, Timothy He, joined us. His eyes seemed to glow when he spoke of his political campaigning and organizing. Prior to 2013, He and Chen had known virtually nothing about American history or social issues. "We were just engineers," He said. "We had no understanding about politics." He had learned about S.V.C.A. through WeChat, and he was proud that they had not only taught themselves how the political process worked but influenced it, too. He, who is fifty-one, quit his job and started his own business, so that his schedule would accommodate his organizing work.

Chen and He had fully embraced the notions of tough love, hard work, and self-determination, and they were glad that Chinese-Americans had become central to the affirmative-action debate, which they interpreted as race-based quotas. He felt that these policies encouraged their beneficiaries to "be lazy." "I don't need to work hard," Chen said, paraphrasing what he believed to be the prevailing attitude among such people. "I don't need to study hard, I still can get into a top school."

He said that it wasn't the percentage of Asians at Harvard that he focussed on. "I care about the spirit. Everybody will be working hard."

“Other races cannot just enjoy their life and go to the top school,” Chen said, envisioning this future. “They have to study hard. Over all, the result is good for America.”

I asked Chen and He if they had ever witnessed this “laziness” for themselves. They were quiet for a moment. Then Chen mentioned how, in 2014, Jesse Jackson had come to Silicon Valley and, in Chen’s words, said, “Oh, too many Asians.” (In a speech on the tech industry’s lack of diversity, Jackson floated the idea of eliminating H1B visas.) So, Chen and He explained, companies invested in diversity. He didn’t have much firsthand experience with the results of this effort, but he felt that it went “against the capitalist system.” “The N.B.A.,” Chen continued. “How many Asians there? If you want to do diversity, how about doing diversity in the N.B.A.? I think the show would be not good.”

It’s possible that immigrants are the only ones who speak about meritocracy and fairness without a trace of irony. (After all, an H1B visa literally attests to one’s merit.) Yukong Zhao, the Florida activist, kept mentioning the American Dream as though it were a contractual arrangement: “The American Dream says that each U.S. citizen should have equal opportunity to pursue prosperity and success through hard work, determination, and initiative.”

By now it was dark outside in San Jose, and absolutely tranquil on this sprawling hillside. A pile of peanut skins sat on the table next to an empty plate. Finally, Chen and He said, Chinese-Americans were doing something for future generations. “If we are for ourselves,” Chen said, “we do not need to do this.”

Up the hill beyond Chen’s house is the Point, a South Bay megachurch with a panoramic view of San Jose’s haze, where Blum spoke to the S.V.C.A. There was still evidence of a recent movie night: a “Mission: Impossible” banner hung across the entrance, and, in the lobby, a six-foot-tall carton of popcorn was bursting with volleyball-size kernels. I followed the red carpet into the auditorium, and a man jumped out of his seat and introduced himself as Jeff Wang, Michael’s father. Michael’s admissions grievance had transformed his father, who has plunged into politics. He is now a school-board member, and he hosts a weekly political radio program. He handed me a copy of the amicus brief that a coalition of Asian-American advocacy groups had recently filed in support of S.F.F.A.’s Harvard lawsuit. Michael was at home studying for the LSAT.

Before the event began, I chatted with Nathaniel Yu, a recent high-school graduate. He and his family had travelled from Danville, a couple of hours north. Yu was wearing a suit and a checked shirt, and his hair was perfectly parted. Perhaps it was the setting, but his wiry coolness reminded me of Tom Cruise. Yu was whisked onstage by one of the event’s m.c.s, a playfully droll woman named Lily Ding. She introduced Yu as a community hero, a young man who had been bullied by his school’s teachers and administrators.

In 2017, a student-body-election video that Yu had made with some friends was deemed “inappropriate” by school staff, who stripped Yu of his title of junior-class president. (It was a James Bond spoof, in which he played the hero, and his friends, who are Muslim-American, played the villains.) Poor judgment is the province of teen-agers, and perhaps, in a different time, this would have been little more than local news. But the episode went viral, with all the requisite cycles of conservative and liberal moralizing, hate mail, and GoFundMe campaigns. The S.V.C.A. had stepped in to help Yu and his family with a First Amendment lawsuit.

Yu praised the young people in attendance for coming, instead of staying at home playing Xbox or PS4: “Big pat on the back for all of you guys here.” He talked about how affirmative action undermined American values of hard work and determination, especially when it came to education. He sighed with theatrical weariness. “It’s really tough being an Asian person,” he said.

As families trickled in, Ding and her co-host, a grave man named Jason Xu, told jokes about Alex Chen’s slowly receding hairline, a kind of chronicle of S.V.C.A.’s hard work over the years. Ding shared her dismay at Harvard, which she had once considered “the lighthouse of social and moral justice.” Finally, it was time to introduce Blum. “We’re all here because of you, Mr. Blum,” she said.

Blum explained that he intended to prove that Harvard’s admissions process sacrificed high-achieving Asian-Americans in the name of racial balancing. When he mentioned Abigail Fisher, heads in the first row started nodding, as if he were a pop star who had just played the first few notes of his hit single. He spoke for about twenty minutes, finishing with a call to action. He wanted everyone to join S.F.F.A. and, if possible, to donate. He got a standing ovation. “Wow. I’m actually *pissed*,” Xu said, as he walked back onstage. Ding, referring to Blum’s attack on the “personal” category in Harvard’s admissions process, said that she didn’t believe that Chinese-American students were “any less personable than any other group.” Then they called for audience members to fly to Boston for the rally the day before the trial: “We should make every effort to be there, to show solidarity and support.”

There were about five hundred people at the Point, and many more would learn of the event through WeChat and the *World Journal*. Blum had told a story that featured Chinese-Americans at the center, as potential heroes. Harvard deserved all the accolades, he had emphasized. But it was not treating people fairly, and it was up to them to make sure that America understood this. They could make change.

For previous generations of Asian-American activists, affirmative action was a key component in the struggle for multiracial justice. In the late eighties, the Department of Education investigated a series of claims alleging that Berkeley, Harvard, and other elite institutions had put a limit on the number of Asian-Americans admitted. The claims had been lodged by young, largely progressive Asian-American activists, for whom affirmative action was the solution to the problems they were identifying, not the cause.

In most cases, the students’ suspicions of unfairness were well founded, and Asian-American populations at these schools began to grow. This history captures the almost paradoxical position of many Asian-American supporters of affirmative action. Nicole Gon Ochi, a lawyer at Asian Americans Advancing Justice, has been working with former, current, and prospective Harvard students, trying to insure that their support for the school’s race-conscious admissions policies is included in the debate. She said that Blum and S.F.F.A. had successfully yoked the question of anti-Asian bias to affirmative action, and she thought the issues were mostly unrelated. Research suggests that if race-conscious admissions were abolished the largest gains would be enjoyed by white applicants, calling into question which groups are actually in competition with one another. “Maybe the ultimate goal is for Asian-Americans to be the predominant group in the elite schools, as opposed to whites,” Prudence Carter, the Berkeley dean, said. “I don’t have a problem with that. But I do have a problem with picking on the few numbers of black and brown students in those schools.” Ochi was adamant that her support for Harvard in this lawsuit did not

imply blind approval of all of Harvard's admissions policies, or deny the need to interrogate claims of institutional bias.

Margaret M. Chin, a sociologist at Hunter College, was involved with the pro-affirmative-action movement as an undergrad at Harvard in the eighties. She has wrestled with the difference between progressive students' efforts to take Harvard to task for a seemingly low acceptance rate for Asian-Americans, when she was there, and the current conservative movement. "It's a different historical moment," she concluded. She was baffled by the resentment the plaintiffs felt toward Harvard. "Why would any of you sue Harvard for doing this? For not accepting you? They reject ninety-five per cent of the people. To me, I was, like, 'Oh, my God. These kids are really entitled.' "

Perhaps, I wondered, one could feel sympathy that the plaintiffs had put so much faith in meritocracy. Chin grew up in public housing on Sixty-fourth Street, the daughter of a restaurant worker and a garment worker. Now she lived across town, a Harvard- and Columbia-educated sociologist, whose son also attended Harvard. I went to Harvard for graduate school, and I pointed out that, in the eyes of a prospective high-school student, or his worried parents, we had already won.

Harvard's a tough place, Chin said; many Asian-Americans were stuck on its name. She pointed to how élitist Harvard remains, how those who "have the most" are still the white kids who populate the campus's secretive Final Clubs. "Our kids are not those kids."

In an echo across time, the Berkeley activists of the eighties had called themselves the Student Coalition for Fair Admissions. An internal investigation at the school showed that a change to the admissions standards, in 1984, had dramatically affected Asian-American applicants. The beneficiaries were white students. In April, 1989, Berkeley's chancellor, a law professor named Ira Michael Heyman, apologized to Asian-Americans. The following year, he stepped down. Heyman had been a civil-rights lawyer and an advocate for racial justice, but he had apparently not thought much about the unique position of Asian-Americans, and he seemed to have underestimated their political will.

I attended Berkeley in the mid-nineties, in the wake of this moment. At the time, I didn't realize that the new chancellor, an engineering professor named Chang-Lin Tien, had got the job in part as a result of his work mediating between Heyman and the activists. It was not uncommon to hear that the University of California had been overrun by Asians. U.C.L.A. was "University of Caucasians Lost Among Asians." U.C.I. (Irvine) was "University of Chinese Immigrants." The jokes seemed to suggest that these schools weren't as good as they once were. It was a reminder of how the goalposts of achievement and excellence could be moved. I often asked people who blamed affirmative action for holding the Asian-American population at around twenty per cent at Harvard what share of the pie would satisfy them. Did they want Harvard to be fifty per cent Asian? It seemed evident that, if this ever happened, the prestige, the aura of selective élitism, wouldn't accrue to such a student body—Harvard would no longer be Harvard.

I was a sophomore in November, 1996, when Proposition 209 passed. The school newspaper endorsed Prop. 209, leading to protesters stealing nearly all twenty-three thousand copies. Once the result was clear, I went to the base of the Campanile, the campus's bell tower, where students had gathered. Some of them had climbed it and refused to come down until affirmative action was reinstated. A person ran up the slope toward us to say that Mario Savio, a hero of Berkeley's

free-speech movement in the sixties, had just died. Through a bullhorn, another person recited the famous speech that Savio had delivered on the steps of Sproul Hall: “There’s a time when the operation of the machine becomes so odious, makes you so sick at heart, that you can’t take part! You can’t even passively take part! And you’ve got to put your bodies upon the gears and upon the wheels . . . upon the levers, upon all the apparatus, and you’ve got to make it stop! And you’ve got to indicate to the people who run it, to the people who own it, that, unless you’re free, the machine will be prevented from working at all!”

I remember wondering whether we weren’t actually defending the machine. Our idea of freedom seemed so limited compared with that of the people who came before. Decades after John F. Kennedy’s grand vision to act affirmatively, affirmative action’s last stand involves seats at the most elite universities in the world.

One of the most ephemeral qualities that admissions officers say they look for in young college applicants is something called “grit.” Unlike other soft qualities, like leadership, it’s clear when you see it. As I listened to Michael Wang talk about the scrutiny that he received after his complaint went public, I admired his spirit. He had launched his complaint in a moment of anger. People online had mocked his earnestness. But now he welcomed the chance to engage his critics, because his own ego was less important than communicating with others.

When Wang and I finished lunch, we returned to his office. We stopped to get bubble tea. As we waited, I asked him about the purple button-up shirt he was wearing—wasn’t that the color of Williams? He smiled, and began rhapsodizing about his time at the college: Thanksgiving dinner with his professors; making Asian food with friends; his twenty-first birthday, when a professor took him out to a bar. He started to talk faster, and the rote stiffness with which he’d recounted his complaint suddenly melted away. “The education I got at Williams was incomparable to what I would get at Harvard,” he said. “I still would have gone to Williams, even if I had gotten into those other schools, now that I’ve been at Williams.”

He didn’t regret his complaint. He still feels that the process is unfair, and that a bit more transparency would help Asian students in the future. But he had loved college in a way that felt special and rare.

What makes this debate so contentious is that it’s about counterfactuals, alternate versions of ourselves. It’s hard not to take things personally, even if the process traffics in a magical impersonality. There are all of the mythologies that intertwine in the process: the farce of a pure meritocracy, of color blindness; a misplaced faith in standard measures of achievement. We suspect that the system is unfair and nonsensical, but we try anyway. We hope that we will be recognized.

The night before Wang’s graduation, he and his friends stayed up late talking about the past few years, cherishing a few more hours together. He had spent all day packing up his room. The next morning, he and his friends listened as the author [Chimamanda Ngozi Adichie](#) delivered the commencement address. “Her message was, you know, when you go out into the world, do things that you won’t regret,” Wang said. “You’ve been given the tools to make an impact and change the world for the better. Go out there and do it.” He thought, Wow, that’s what I want to do.