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Higher ed unites against Asian students in Supreme Court's Harvard discrimination case

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The dirty little secret of higher-ed admissions is that achieving a desired "diverse" racial mix means discriminating against Asian applicants — or at least, secret until Students for Fair Admissions exposed it.

The higher-ed establishment is brazenly defending its race-conscious admissions in dozens of amicus briefs just filed in the US Supreme Court opposing SFFA's discrimination suits against Harvard and the University of North Carolina. It's terrified the cases, which the court just announced it will hear in October, could spell the end of racial affirmative action.

The statistics are shocking. As SFFA noted in its Harvard petition, "an Asian American in the fourth-lowest decile has virtually no chance of being admitted to Harvard (0.9%); but an African American in that decile has a higher chance of admission (12.8%) than an Asian American in the *top* decile (12.7%)."

Such unequal treatment followed the 2003 Supreme Court decision in Grutter v. Bollinger permitting schools' temporary, limited use of race as one of many factors for the desired educational objective of viewpoint diversity. Harvard and other schools have used this loophole to drive *de facto* illegal racial quotas, using admissions subterfuges like personal scores and a "holistic" approach reminiscent of the methodologies Harvard developed a century ago to limit Jewish enrollment.

About two dozen mostly right-leaning nonprofits filed amicus briefs supporting the Asian students. In a brief our Legal Insurrection Foundation filed, we documented how this hyper-focus on race has contributed to a narrowing, not broadening, of viewpoint diversity. It's time to close the loophole.

Not a *single* college or university supported the Asian students. To the contrary, several dozen briefs were filed *against* SFFA on behalf of hundreds of colleges, universities, higher-education and professional-school associations, teachers unions, more than 1,000 professors and deans and even college basketball coaches.

One of the most striking things about these briefs is the openness with which colleges admit to having racial preferences and their complete lack of sympathy for the Asian victims of discrimination.

The American Bar Association, which accredits law schools, bluntly demanded the court "not ban race-conscious admissions policies." The University of California president and chancellors argued that "universities must retain the ability to engage in the limited consideration of race."

A group of highly competitive schools including most of the Ivy League claimed, "No race-neutral alternative presently can fully replace race-conscious individualized and holistic review to obtain the diverse student body."

Without racial preferences, in other words, these schools could not achieve their desired racial mix.

A group of highly select small colleges wrote: "Amherst, for example, has determined that an entirely race-blind policy would reduce the percentage of historically underrepresented students of color in its student body — including Native American, Black, and Hispanic students —– by approximately half."

The University of Michigan argued similarly, noting a 44% drop in black undergrad enrollment after a 2006 state ban on racial discrimination in admissions. The University of California system likewise admitted fewer black and Hispanic students after Golden State voters banned discriminatory admissions in 1996 — a ban voters just reiterated in 2020.

The educational establishment's uniformity and vigor in supporting racial preferences is staggering.

If the most selective schools assessed students based on SATs, grades and other non-racial factors, they say, black and Hispanic admissions would plummet. That disparity suggests these schools have created separate racial tracks for applicants, establishing de facto illegal racial quotas using linguistic sleight-of-hand to cover their tracks.

Justice Sandra Day O'Connor's majority opinion in Grutter rationalized race-conscious admissions as a way for universities to choose students who would "contribute the most to the 'robust exchange of ideas.'"

Yet, as we pointed out in our brief, "The grand judicial experiment of excusing racial discrimination in university admissions in the hope it would promote the educational objective of diversity of viewpoint has failed."

Indeed, since Gutter, campuses have become *less* ideologically diverse and *more* intolerant of dissenting ideas. Nonpartisan surveys consistently show that students are afraid to voice opinions, in and out of class. And no wonder: A Cato Institute poll found that just 20% of students believe their professors have a balanced mix of political views. The focus on discriminatory admissions and the growing ideological intolerance on campus are connected.

The Supreme Court faces a stark choice: Continue the nod to racial discrimination or, as Chief Justice John Roberts once wrote, hold: "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."