

# The Guardian

## **‘The wolf of racial bias’: the admissions lawsuit rocking Harvard**

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A trial that could eventually decide the fate of affirmative action programs in the United States is playing out in Boston as a lawsuit that alleges Harvard has intentionally and systematically discriminated against Asian Americans brings the Ivy League school to court.

Supporters of the lawsuit say Harvard illegally discriminates against Asian Americans, putting a cap on the number of Asians admitted to the university and making it harder for Asian applicants to get in.

Its opponents charge that the case is not even about Asian Americans at Harvard; rather, they say it is an issue that has been co-opted by conservative activists whose real goal is ending race-conscious admissions policies that give minority students a better shot at attending universities like Harvard. Supporters on both sides charge the other with racism.

Regardless of the outcome of the three-week trial in Boston, the case is expected to eventually make its way up to the supreme court.

Students for Fair Admissions (SFFA), a group headed by 66-year-old litigator Edward Blum, brought the suit. Their argument runs: across the board, Asian American Harvard applicants outperform members of other racial groups in test scores and grades. They also get higher marks in the admissions process for extracurricular activities and alumni interviews. Yet, they are assigned low marks on a vague “personal rating” that takes into account things like courage, likability, kindness and having a positive personality. They charge that Asian American students are accepted at lower rates than other candidates with similar qualifications. In short, they say the bar is set higher for Asians.

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Harvard flatly denies that its admissions process involves discrimination or quotas on racial groups. The university says that race is just one of a number of factors considered – and that it is only considered as a positive factor, not a negative one.

The jury-less trial opened on Monday with the SFFA lawyer Adam Mortara saying: “You have let the wolf of racial bias in through the front door.”

The Harvard lawyer William Lee dismissed SFFA’s analysis of tens of thousands of pages of Harvard documents, saying: “If you torture the data long enough, it will confess to anything.”

Those backing Harvard say that a win for the plaintiffs could have far-reaching implications and limit the access to higher education for minorities.

“It will dictate the future opportunities for millions of students of colour across the country,” said Nicole Ochi, an attorney with Asian Americans Advancing Justice.

Supporters of the lawsuit see it differently. Harvard graduate Lee Cheng is a lawyer from the Asian American Legal Foundation, which is supporting SFFA.

“It’s a very simple and straightforward case,” he says. “Individual Americans who are guaranteed rights under the constitution are fighting for those rights, fighting for the right not to be discriminated against based on their race by Harvard University.”

Cheng says the suit has nothing to do with ending affirmative action and that he is not against using race as a plus factor in admissions. Instead, he said: “It’s about saying Harvard cannot set different and more difficult standards for admitting Asian students relative to students of any other ethnic group. It’s that simple – and it’s undeniable that Harvard has.”

Edward Blum speaks to reporters at a rally in Boston ahead of the start of the trial in Boston, Massachusetts, on 14 October. Photograph: Brian Snyder/Reuters

Opponents say that Blum, the founder and president of SFFA, is not as interested in getting more Asian American students into Harvard or other universities as he is with wiping out affirmative action policies, in line with his conservative beliefs.

Blum previously took a case against the University of Texas at Austin to the supreme court twice over affirmative action. In the case, plaintiff Abigail Fisher – who is white – claimed she was denied admission to the university because of her race. The case failed.

After the failure of the Fisher case, Blum found new targets: Harvard, the University of North Carolina at Chapel Hill and the University of Wisconsin-Madison. He formed websites like harvardnotfair.org, inviting students who believed they had been denied admission to the three universities based on their race to get in touch. All three websites prominently featured photos of young Asians on their homepages.

“That’s the goal of these lawsuits, is to eliminate the consideration of race or ethnicity,” he told the Houston Chinese Alliance in 2015. “So, I needed plaintiffs. I needed Asian plaintiffs.”

Ilya Shapiro, a supporter of the suit and a senior fellow in constitutional studies at the libertarian Cato Institute in Washington, says while the initial priority is addressing discrimination against Asian Americans at Harvard, the case could eventually result in a change to affirmative action.

He acknowledges that such a change could see fewer members of other minorities attending top universities.

“What you have now is significant mismatch, people getting preferences solely based on their race and getting into schools that they otherwise don’t qualify for,” he said. “If you move to a more merit-based, less race-based system, you probably will have fewer blacks and Latinos ... not in overall higher education, but in the very top schools probably.”

Beyond potentially affecting the future of affirmative action in the country, the case could also lift the veil on how admissions are conducted at Harvard, a notoriously tough university to get into with an acceptance rate for this year’s freshman class of just 4.59%.

On Monday, documents introduced by SFFA showed how Harvard handles issuing “interest letters” to high school students in “sparse country” – 20 mainly rural states that Harvard does not see many applications from. In sparse country, students who identified as white or unknown could receive interest letters from Harvard with PSAT scores as low as 1310, but Asian Americans in the same areas with similar scores did not.

The recruitment letters do not guarantee admission to Harvard, but their recipients are twice as likely to get admitted.

Harvard senior Thang Diep, who is backing Harvard in the case, was born in Vietnam but immigrated to the US as a child. His SAT scores were below Harvard’s average, but he still impressed interviewers. Photograph: Josh Wood for the Guardian

Harvard senior Thang Diep is backing Harvard in the case. Born in Vietnam, Diep moved to the US when he was eight. His SAT scores were below Harvard’s average, but his interviewers were impressed by his personality, dedication to education and uniqueness. Diep feels like his essay, which focused on his experience and struggles as an Asian immigrant, helped him as well.

“I don’t think I would be here if test scores were the only thing that mattered,” he says.

To Diep, efforts to get rid of affirmative action and white supremacy go hand in hand.

“At its core, it’s relying on this notion of a zero-sum game: that if one group gets something, another group can’t,” he said.

Diep will testify on behalf of Harvard later this month.

Senior Sally Chen will testify on behalf of Harvard in the trial. Her identity and her race were a major part of her application. ‘I don’t think I could have written about myself without talking about race,’ she said. Photograph: Josh Wood for the Guardian

Also testifying is Sally Chen, another senior. Chen is the daughter of Chinese immigrants and grew up in California, where her father worked as a cook at a Chinese restaurant.

Like Diep, Chen’s application to Harvard leaned heavily on her identity.

“How can you talk about someone’s potential or their achievements without giving a full context that talks about their identity and the struggles they have faced?” she said. “I don’t think I could have written about myself without talking about race.”

She added: “Who benefits from not being able to talk about their race in the admissions process are people who feel they have not experienced racism. And for the most part, those are white applicants.”

Even if the plaintiffs are defeated, pro-affirmative action activists may have their work cut out for them in coming years; Blum has already filed another lawsuit against the University of North Carolina. Shapiro, the Cato Institute fellow, expects the supreme court to ultimately undo race-conscious admissions.

“Whether it’s with this case or 10 years down the line or whenever it is, it has to stop at a certain point,” he said.

Chen, the Harvard senior, said if the plaintiffs are ultimately successful, she would question the feasibility of attempts to remove race from the admissions process.

“If I interned with the NAACP, do you redact the name?” she said. “At what point do we redact everything from someone’s file because it is too tied to their identity?”