



AMERICAN ASSOCIATION FOR ACCESS, EQUITY AND DIVERSITY URGES THE U.S. SUPREME COURT TO AFFIRM THAT DIVERSITY IN HIGHER EDUCATION ADMISSIONS IS CONSTITUTIONAL

Student Body Diversity in Higher Education Is Essential to Promoting the Nation's Future Workforces and Developing the Next Generation of Leaders

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Washington, DC – November 1, 2022. The American Association for Access, Equity and Diversity (AAAED), a national not-for-profit association of equal opportunity, diversity and affirmative action professionals, strongly urges the U.S. Supreme Court to affirm the lower court's decision in the case of *Students for Fair Admissions Inc. v. President & Fellows of Harvard College and Students for Fair Admissions Inc v. the University of North Carolina*.¹ The Association strongly urges the Court to respect forty-four years of precedent and maintain race conscious admissions in higher education as consistent with Title VI of the Civil Rights Act of 1964 and the 14th Amendment to the U.S. Constitution.

Founded in 1974 as the American Association for Affirmative Action, AAAED is the longest-serving organization of Equal Opportunity Professionals. AAAED provides professional training to members, enabling them to be more successful and productive in their careers as equal opportunity, compliance and diversity practitioners. AAAED also promotes the understanding and advocacy of affirmative action and other equal opportunity laws to enhance the tenets of access, inclusion and equality in employment, economic and educational opportunities.

For 48 years, the Association has stood for equal opportunity in education, employment and contracting. "We commend colleges and universities who have led the effort in preparing leaders of color in all walks of life," said Shirley J. Wilcher, AAAED Executive Director. "With the growing focus on Diversity, Equity, and Inclusion (DEI), now is not the time to reverse course and further constrain the universities' efforts to recruit underrepresented students of color who will enter the workplaces of the future, she added."

In the *amicus* brief filed in support of Harvard and the University of North Carolina by AAAED and the Fund for Leadership, Equity, Access and Diversity (LEAD Fund), *et al.*, the authors asserted that there is no basis for ignoring precedent and overturning *Grutter v. Bollinger*, 539 U.S. 306 (2003), the 2003 case

¹ Nos. 20-1199 & 21-707. For a copy of AAAED's *Amicus Curiae* Brief, go to: <https://www.aaaed.org/images/aaaed/NC%20Amicus%20Brief.pdf>

that reaffirmed that diversity in higher education was a compelling interest under the Constitution. Both institutions adhered to the ruling of *Grutter* by using a holistic admissions process, considering each student individually. Moreover, in both cases, the use of race among many factors was limited. Lastly, the lower courts determined that there was no evidence of discrimination against the Asian American students.

At the October 31st oral argument, some justices were exceedingly focused on the “dangerousness” of racial classifications. There is nothing dangerous about students including their own racial identity and experiences in their applications. Race is only one of many factors used in deciding whom to admit. Other factors include grades and test scores, socioeconomic status, geography, athletics, legacies, extra-curricular activities and letters of recommendation. Moreover, to prevent admissions staff from considering a student’s identity by discouraging the student from referring to their race, history and experiences as persons of color, while permitting all other factors, is untenable and may also raise Equal Protection concerns.

The Court also spent time discussing the limits of diversity in admissions, citing Justice Sandra Day O’Connor’s suggestion in *Grutter* that race-conscious admissions should end in 25 years. “Have we reached the time when we have made so much progress that we should cease student body diversity efforts in selective colleges?” The answer is clearly “No,” added Wilcher.

As AAAED wrote in its brief:

the importance of diversity to education outcomes has never been greater. Our daily newsfeeds are filled with disturbing accounts of individuals committing crimes where the evidence reveals racially motivated intentions. Our colleges and universities, which are charged with producing future leaders who can lead a restoration of racial harmony and tolerance, still need the tools sanctioned in *Grutter* to achieve the educational benefits of student diversity. A reversal of *Grutter* and its progeny would strike a devastating blow to these efforts.

The experiences in California and other states that ended race conscious affirmative action are ample proof that when such legislation is passed, the number of underrepresented African Americans and Hispanics admitted plummets. While so-called race-neutral alternatives have been instituted, including percent plans and socio-economic status as factors to replace race, no approach has been as successful.

As the United States becomes increasingly diverse, this is not the time to suggest that selective institutions of higher education have no room for the individuals who compose the largest component of the demographic shift. We urge the Court to remember Justice Harry Blackmun’s admonition in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978): “In order to get beyond racism, we must first take account of race. There is no other way.”

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