NO. 23-170

In The

Supreme Court of the United States

COALITION FOR TJ,

Petitioner,

v.

FAIRFAX COUNTY SCHOOL BOARD,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF THE CHINESE AMERICAN CITIZENS ALLIANCE OF GREATER NEW YORK, DEFEND AMERICAN IDEALS, EQUAL RIGHTS FOR ALL PAC, PARENT LEADERS FOR ACCELERATED CURRICULUM AND EDUCATION—NEW YORK CITY, QUEENS PARENTS UNITED, THE ACE FOUNDATION, THE SILICON VALLEY CHINESE ASSOCIATION FOUNDATION, THE NEW YORK RESIDENTS ALLIANCE, AND THE RICHMOND JEWISH ALLIANCE AS *AMICI CURIAE* IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF INTEREST[1]

The Chinese American Citizens Alliance of Greater New York ("CACAGNY") is a chapter of the Chinese American Citizens Alliance, the oldest Asian-American civil rights organization in America. Its mission is to empower Chinese Americans as citizens of the United States based on principles of fairness and equal opportunity and guided by ideals of patriotism, civility, dedication to family and culture, and high ethical and moral standards.

Defend American Ideals is an organization that seeks to use public advocacy and education to support the founding ideals of the United States, including the notions that we are all created equal and should be judged by the content of our character.

Equal Rights for All PAC ("ERFA") is a nonpartisan political action committee that promotes equal rights and personal liberty, founded after the landslide victory of the 2020 California "No on Prop. 16" campaign. ERFA seeks to identify, nurture, and support political leaders who are committed to the principle of equal rights and an equal chance to compete.

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[1] Consistent with Rule 37.1, *amici* provided notice to counsel of record for all parties of their intention to file this brief at least 10 days prior to the deadline to file this brief. No counsel for a party authored this brief in whole or part; no counsel or party contributed money intended to fund the preparation or submission of this brief; and no person other than amici or their counsel contributed money intended to fund its preparation or submission.

Parent Leaders for Accelerated Curriculum and Education—New York City ("PLACE NYC") is a group of parents that seek to improve the academic rigor and standards of New York City public schools curricula in order to improve students' ability to achieve their greatest potential and prepare them for the next phase of their life's journey.

Queens Parents United is a coalition of parents, families, and other community-based stakeholders committed to pursuing excellence in public schools by improving schools in local communities.

The ACE Foundation is a nonpartisan, nonprofit organization located in Washington State. It was founded after the state's Asian American community successfully led a statewide referendum campaign in 2019 to keep the voter-approved Washington Civil Rights Act intact and reject racial preference in public employment, public education, or public contracting. Its mission focuses on educating the public about equal protection for all and promoting civic engagement within the Asian American community.

The Silicon Valley Chinese Association Foundation is a nonprofit grassroots organization that seeks to promote the involvement of Chinese communities in public affairs and public policy in the United States.

The New York Residents Alliance ("NYRA") was established in 2018 and is a federally registered 501(c)(3) nonprofit organization committed to championing Asian American equalities, quality

education, and public safety in New York City and State.

The Richmond Jewish Alliance (RJA), is a non-partisan, tax-exempt 501C(3), formed to educate and advocate for America's founding principles including equal opportunity for all, just application of the law, diversity of ideas, free enterprise, and merit based achievement. It believes a public that embraces these concepts will never stifle debate, making it unlikely to propagate antisemitism or other manifestations of hate.

INTRODUCTION

This case is about more than just who gains admission to a single high school in Northern Virginia. This case is about whether public schools can wield nominally "neutral" criteria as a tool to intentionally reduce the number of students from one racial, religious, or ethnic group to increase the number of students from other racial, religious, or ethnic groups.

"At the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens 'as individuals, not as simply components of a racial, religious, sexual or national class.'" *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (quoting *Metro Broad., Inc. v. FCC*, 497 U.S. 547, 602 (1990) (O'Connor, J., dissenting).

This is particularly true in education. One of the central purposes of public education is to ensure that all children have an opportunity to succeed. This

goal is fatally undermined if students are viewed as interchangeable racial, religious, or ethnic statistics.

The Court recently reiterated that "the right to a public education 'must be made available to all on equal terms.'" *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 143 S.Ct. 2141, 2160 (2023) ("*SFFA*") (quoting *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954)). "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Id.* at 2162 (quoting *Rice v. Cayetano*, 528 U.S. 495, 517 (2000)). Thus, "[t]he clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the states." *Id.* at 2161 (quoting *Loving v. Virginia*, 388 U.S. 1, 10 (1967)).

Students are individuals with their own hopes, dreams, and abilities. They are not representatives or avatars of their racial, religious, or ethnic heritage. They are not mere statistics. While improving educational opportunities for typically underserved or overlooked communities is indeed commendable, the solution to inequity cannot be to level down or deliberately hold students back from reaching their potential based on their race, religion, or ethnic origin.

While the Fourth Circuit's opinion is inconsistent with *SFFA*, simply remanding this case to the Fourth Circuit with instructions to reconsider in light of *SFFA* will not adequately protect students' Fourteenth Amendment rights. Selective schools at

the pre-college and college levels are already implementing what seem like facially race-neutral processes, but really are schemes based on race designed to skirt this Court's ruling in *SFFA*.

Moreover, the Fourth Circuit's test for assessing impermissible discrimination, if permitted to stand, would sanction a great deal of mischief, providing a safe harbor for school districts to engage in *some* intentional discrimination, as long as it is not *too much*. This Goldilocks approach to racial discrimination is flatly irreconcilable with the "'core purpose' of the Equal Protection Clause: 'do[ing] away with *all* governmentally imposed discrimination based on race.'" *SFFA*, 143 S.Ct. 2161 (quoting *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984)) (emphasis added).

This case thus presents questions of national importance that merit a claim on the Court's valuable time.

SUMMARY OF THE ARGUMENT

The Court should address these important questions without delay.

First, this case presents questions that are distinct from those addressed in *SFFA*. The issue of educational institutions using facially neutral measures to deliberately engineer preferred racial balances at educational institutions is a growing national concern. Over the past few years, a number of elite secondary schools have moved away from more objective and individualized measures, such as standardized tests, to more amorphous or "holistic"

evaluations, including complex quota schemes ostensibly based on geography or other factors, rather than race. Notwithstanding the facially neutral quality of these reforms, proponents are explicit that the goal is to change the racial makeup of elite educational institutions, including by decreasing the relative percentage of Asian American students.

While expanding the range of neutral factors schools consider in making admissions decisions may be a valid policy choice, it cannot serve as a backdoor for impermissible balancing. Following *SFFA*'s holding prohibiting educational institutions from explicitly engaging in racial engineering, it is only likely that these more indirect paths to achieve the same outcomes will proliferate. *See generally* Steven McGuire, *Can Harvard Use Application Essays to Discriminate by Race?*, Wall St. J. (Aug. 11, 2023), https://www.wsj.com/articles/can-harvard-use-application-essays-to-discriminate-by-race-unc-fair-admission-5638086f?ns=prod/accounts-wsj (noting that following *SFFA* "the application processes at some of these [colleges and universities] are now even more narrowly focused on diversity and identity than before."). Thus, it would benefit students, parents, and school districts to understand whether and how these indirect policies are consistent with—or limited by—the promises of the Equal Protection Clause.

Second, this case presents critically important questions of what the appropriate baseline is for assessing equal protection claims. The Fourth Circuit's disproportionate impact test would allow educational institutions to have dramatic negative

effects on members of racial, religious, or ethnic groups without redress in the courts. This is contrary to the baseline assessed in *SFFA* and inconsistent with the fundamental purpose of the Equal Protection Clause.

Finally, this case presents important national questions about the appropriate standard of review for facially neutral policies that are developed in a race-conscious environment. Respondent developed its admissions policy in a race-conscious environment. They collected and analyzed demographic data in assessing their proposed policy. And they adopted a revised admissions policy with the intent of altering the racial composition of Thomas Jefferson High School for Science and Technology ("TJ"). Nevertheless, the Fourth Circuit determined that rational basis review was the appropriate standard for assessing Respondent's policy. This standard opens the door to easy circumvention of the equal protection principles set forth in *SFFA*. Government decisions that are made in a race-conscious manner should be evaluated under a heightened standard of scrutiny lest *SFFA* be reduced to a dead letter in practice.

I. This Case Presents Important Questions that Are Not Expressly Resolved by *SFFA*

The Court should resist the temptation to remand this case to the Fourth Circuit for reconsideration in light of *SFFA*. While the Fourth Circuit's decision is inconsistent with *SFFA*, this case is distinct enough to warrant consideration in its own

right. Moreover, the questions presented in this case, particularly those related to the use of facially neutral proxies to achieve preferred racial balances, are widespread and important enough to merit consideration.

A. This Case Presents Questions that are Not Directly Addressed by *SFFA*

This case presents distinct issues that are not directly resolved by *SFFA*.

SFFA concerned the explicit use of race in admissions. This case concerns the use of facially neutral proxies for race in admissions. While *SFFA* cautioned, "what cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows, and the prohibition against racial discrimination is 'leveled at the thing, not the name,'" it did not delineate the precise contours of "the thing" at issue. *SFFA*, 143 S.Ct. at 2176 (quoting *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325 (1867)). Those contours matter, particularly as policymakers seek to navigate the line between facilitating success for historically disadvantaged students and treating students as individuals rather than representatives of their race or ethnic group.

Similarly, *SFFA* did not address (because it did not have to address) the appropriate standard of review for a facially neutral policy that was adopted with reference to specific racial goals.

Finally, as described below, while *SFFA* certainly *suggests* that the Fourth Circuit applied the

wrong baseline, it does not say so explicitly. Resolving this question is incredibly important because it will have reverberations in other aspects of equal protection jurisprudence. This case presents an opportunity for the Court to nip evasion and resistance to *SFFA* in the bud.

B. Resolving these Questions is Important Because of the Increasing Use of Facially Neutral Proxies to Achieve Desired Racial Distributions in Education

Not long ago, advocates concerned that minority and low-income students were being overlooked in the TJ admissions process sought to place greater weight on the admissions test over more intangible factors such as extracurricular activities and personal essays. See Emma Brown, Jefferson H.S., Fairfax Schools Shut Out Blacks and Latinos, Complaint Alleges, Wash. Post (Jul. 24, 2012), https://www.washingtonpost.com/local/education/thomas-jefferson-hs-fairfax-schools-shut-out-blacks-and-latinos-complaint-alleges/2012/07/23/gJQAPOIO5W_story.html ("Advocates for gifted students have been pressing the School Board to remedy that problem [that the admissions criteria are failing to identify the best and brightest in math and science] by overhauling the TJ admissions process, giving more weight to applicants' test scores and less to written essays.").

That has changed. Now, advocates concerned about the racial makeup of elite academic institutions

are moving away from individualized determinations and towards alternative proxies for race. For example, in addition to Respondent:

- New York City operates eight specialized high schools. *See Christa McAuliffe Intermediate Sch. PTO, Inc. v De Blasio*, 627 F.Supp.3d 253, 256 (S.D.N.Y. 2022), *appeal pending*, Case No. 22-2649. Like with Respondent, "[h]istorically, Black and Latino students have been underrepresented at the Schools compared to the City's public school system overall," while Asian-American students attended specialized schools at rates above the Asian proportion of the population. *Id.* Like Respondent, admission to these specialized schools was primarily based on an academic exam. *Id.* at 257. And like Respondent, the local government sought to change the admissions criteria, moving away from objective measures like standardized testing "to increase the racial, ethnic, geographic, and socio-economic diversity of the Schools." *Id.* at 257.

- Lowell High School in San Francisco shifted from test-based admissions to a lottery-based system, in large part based on concerns that Asian students were purportedly overrepresented while Black and Hispanic students were historically underrepresented relative to the broader regional population. *See generally* Nathan Heller, *What Happens When an Elite Public School Becomes Open to All?* The New Republic (Mar. 7, 2022),

https://www.newyorker.com/magazine/2022/03/14/what-happens-when-an-elite-public-school-becomes-open-to-all.

- Boston operates three "exam schools," which are selective high schools "[k]nown for the strength of their academic programs." *Boston Parent Coal. for Acad. Excellence Corp. v. School Comm. of Boston*, 966 F.3d 37, 41 (1st Cir. 2021). As with other schools, the school district adopted new admissions criteria that deemphasized standardized testing in order to intentionally change the racial composition of the school, allegedly by reducing the number of Asian students attending the exam schools. *See Parents Fight Discrimination by Proxy at Boston's Elite Public Schools*, Pacific Legal Foundation, https://pacificlegal.org/case/boston-exam-schools-discrimination/.

These alternative processes have similar problems and disproportionate impacts on Respondent's admissions process.

In New York, a key component of socioeconomic preference is the Economic Needs Index ("ENI"). While Asian Americans in New York City have higher poverty rates than the city as a whole, ENIs are used to exclude Asian students from Specialized High Schools. *See generally* NYC Opportunity, *Poverty Data* (accessed Sept. 21, 2023), https://www.nyc.gov/site/opportunity/poverty-in-nyc/data-tool.page; Complaint, *Christa McAuliffe*

Intermediate School PTO, Inc., et al. v. De Blasio, et al., Case No. 1:18-cv-11657 (S.D.N.Y. Dec. 13, 2018). What makes ENI suspect is that it is not applied against a student's specific economic condition, but rather against his or her *school's* economic condition. Thus, despite Asians being economically poorer, the ENI, along with a cutoff threshold, can be reverse-engineered by superfluous data to exclude Asians.

In TJ's case, socioeconomic status became part of its holistic admissions process, but precisely how it works is not transparent, making the socioeconomic preference even more potent for implementing racial preferences with plausible deniability.

II. Respondent's Admissions Policy Disproportionately Impacted Asian Students

A. The Fourth Circuit Used the Wrong Baseline in Assessing Disproportionate Impact

The Fourth Circuit applied the wrong test for assessing disproportionate impact under the Equal Protection Clause. The Fourth Circuit used as a baseline "an evaluation of a given racial or ethnic group's share of the number of applications to TJ versus that group's share of the offers extended," which is then "compared to how separate, otherwise similarly situated groups fared in securing offers of admission." *Coalition for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 881 (4th Cir. May 23, 2023).

This approach misses the forest for the trees.

First, this approach appears to conflate disparate impact under statutes like the Fair Housing Act and disproportionate impact under the *Arlington Heights* analysis of equal protection claims.

Disparate treatment claims under the Equal Protection Clause are different from disparate impact claims under various civil rights statutes because the standard of proof is different. Equal protection plaintiffs traditionally must clear a higher bar: establishing discriminatory intent. In contrast, claims under various civil rights statutes only require a plaintiff to show a disproportionately adverse effect on minorities that is not justified by a legitimate rationale. *See Texas Dep't of Hous. and Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 524 (2015). Thus, the purpose of a disparate impact analysis under laws like the Fair Housing Act is to make a claim based solely on the disproportionate effect on a minority community. The purpose of a disproportionate impact analysis in an equal protection claim is to help make the case that a decisionmaker acted with an improper motive.

Looking at the percentage of Asian students admitted relative to the percentage of applicants makes more sense when a determination of a disparate impact is effectively dispositive, such as under other civil rights laws. It does not make sense when the resulting effect is relevant as a proxy indicating discriminatory intent.

Second, this approach is inconsistent with the Court's approach in *SFFA*. *SFFA* looked at the change

in the number of Asian students admitted before and after Harvard's consideration of race in assessing whether an individual's race was used against him in the admissions process. To wit, *SFFA* noted, "the First Circuit found that Harvard's consideration of race has led to an 11.1% decrease in the number of Asian-Americans admitted to Harvard. [Citation]. And the District Court observed that Harvard's 'policy of considering applicants' race . . . overall resulted in fewer Asian American and white students being admitted.' [Citation]." *SFFA*, 143 S.Ct. at 2168–69 (citations omitted).

Tellingly, the Court did not compare admissions rates to the percentage of Asian American applicants. The relevant baseline for evaluating claims under the Equal Protection Clause is the *status quo ante*.

Finally, the Fourth Circuit's approach would lead to absurd results. Under the Fourth Circuit's test, a government could enact a facially neutral policy with an explicitly discriminatory intent as long as the effect is not so severe that successful members of a minority community do not dip below the percentage of applicants. This is a recipe for intentional leveling down that disregards the importance of the individual.

B. Respondent's Policy Has a Clear Disproportionate Impact on Asian American Students

Within one year, as a result of the changes to TJ's admissions policies, the percentage of offers of admissions received by Asian students declined by nearly 24 percent from the five-year average. By

contrast, the admissions numbers for every other racial demographic category listed by Fairfax County increased.

In 2021, the first year under the new admissions criteria, 54.36 percent of offers of admission went to students who identified as Asian. TJHSST Offers Admission to 550 Students; Broadens Access to Students Who Have an Aptitude for STEM, Fairfax Cnty. Pub. Schs. (June 23, 2021), https://www.fcps.edu/news/tjhsst-offers-admission-550-students-broadens-access-students-who-have-aptitude-stem. In the five years before, the corresponding number never dipped below 65 percent and averaged 71.07 percent, coming in at 73.0 percent in 2020, 72.87 percent in 2019, 65.2 percent in 2018, 74.9 percent in 2017, and 69.4 percent in 2016. TJHSST Offers Admission to 486 Students, Fairfax Cnty. Pub. Schs. (June 1, 2020), https://www.fcps.edu/news/tjhsst-offers-admission-486-students; FCPS' TJHSST Offers Admission to 494 Students, Fairfax Cnty. Pub. Schs. (May 31, 2019), https://www.fcps.edu/news/fcps-tjhsst-offers-admission-494-students; TJHSST Offers Admission to 485 Students for the Class of 2022, Fairfax Cnty. Pub. Schs. (Apr. 9, 2018), https://www.fcps.edu/news/tjhsst-offers-admission-485-students class-2022; FCPS Offers Admission to TJHSST to 490 Students, Fairfax Cnty. Pub. Schs. (May 16, 2017), https://www.fcps.edu/news/fcps-offers-admission-tjhsst 490-students; FCPS' Thomas Jefferson High School for Science and Technology Offers Admission to 483 Students, Fairfax Cnty. Pub. Schs. (Apr. 8, 2016).

This is not a mere coincidence. It is a foreseeable and intended consequence of Respondent's admissions policy. TJ is a school dedicated to excellence in math and science. But math and science aptitude is not evenly distributed across schools. As the results of Virginia's Standards of Learning tests show, science and math aptitude vary widely across Fairfax County Middle Schools.[2]

In 2018–2019, 97 percent of students at Longfellow Middle School passed their Eighth Grade Science SOL, while 46 percent had an advanced pass, the highest number in the county. *See* SOL Test Pass Rates & Other Results, Va. Dep't of Educ. (Accessed June 3, 2022), https://www.doe.virginia.gov/statistics_reports/sol-pass-rates/index.shtml. By contrast, Whitman Middle School had a pass rate of only 60 percent, with only 2 percent of students obtaining an advanced pass rate. *Id.* Math scores tell a similar story: in 2018–2019, Franklin Middle School led the county with an advanced pass rate of 48 percent and an overall pass rate of 93 percent, while Whitman Middle School had

[2] *See generally* Brief of *Amici Curie* the American Hindu Coalition, Chinese American Citizens Alliance—Greater New York, the Friends of Lowell Foundation, No left Turn in Education, Parent Leaders for Accelerated Curriculum and Education NYC, The Richmond Jewish Coalition, and United Against Antisemitism—NOVA in Support of Plaintiff-Appellee Coalition for TJ Seeking Affirmance, *Coalition for TJ v. Fairfax County School Board*, Case No. 1:21-cv-00296 (4th Cir. June 21, 2022) (presenting substantially similar arguments to the Fourth Circuit).

the lowest advanced pass rate, 6 percent, with a 67 percent overall pass rate. *Id.*

The impact on the individual is made worse (and becomes actionable) when considered in context. Asian students are also not equally represented in each middle school. For the 2020–2021 school year, the population of Asian students ranged from a high of 49.29 percent of the student body at Carson Middle School to a low of 4.74 percent of the student body at Whitman Middle School. *Compare School Profile: Carson Middle School Demographics*, Fairfax Cnty. Pub. Schs. (Accessed June 3, 2022), https://schoolprofiles.fcps.edu/schlprfl/f?p=108:13:::NO::P0_CURRENT_SCHOOL_ID,P0_EDSL:171,0 *with School Profile: Whitman Middle School Demographics*, Fairfax Cnty. Pub. Schs. (Accessed June 3, 2022), https://schoolprofiles.fcps.edu/schlprfl/f?p=108:13:::NO::P0_CURRENT_SCHOOL_ID,P0_EDSL:221,0.

In fact, four out of five schools with the highest advanced pass rates for grade eight science SOLs also have one of the five highest populations of Asian students in the county, while three of the top five schools with the highest advanced pass rates in grade eight mathematics SOLs also have one of the five highest populations of Asian students.

Thus, it is little surprise that Respondent's admissions policy had the intended effect of dramatically reducing the number of Asian students at TJ.

III. Race Conscious Decision Making Should be Subject to Heightened Scrutiny

Over 15 years ago, the Court declared, "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007). More recently, the Court reiterated that "[e]liminating racial discrimination means eliminating all of it." *SFFA*, 143 S.Ct. at 2162. "Any exception to the Constitution's demand for equal protection must survive a daunting two-step examination known in our cases as 'strict scrutiny.'"

The trouble comes in determining what qualifies as an "exception" to the Constitution's demand for equal protection. When a law is facially neutral, courts have applied a different framework, the framework set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265 (1977). In *Arlington Heights*, this Court identified four factors relevant in identifying discriminatory intent in facially neutral policies: (1) "[t]he impact of the official action – whether it 'bears more heavily on one race than another;'" (2) "[t]he historical background of the decision;" (3) "[d]epartures from the normal procedural sequence;" and (4) "[t]he legislative or administrative history . . . especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports." *Id.* at 266, 267, 268 (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)). But how these factors are applied,

particularly with respect to laws that are adopted in a race-conscious manner, can be a matter of much dispute.

The Court should take this opportunity to clarify this framework in the educational context. Specifically, the Court should clarify that the collection and use of racial and ethnic information in formulating admissions decisions is automatically subject to strict scrutiny, even where the resulting policy is facially neutral.

The surest way to achieve non-discriminatory admissions starts with educational institutions not asking for race and not recording it even if applicants or students volunteer it. Harvard already does that for religion. *See SFFA*, 143 S.Ct. at 2189 (Thomas, J. concurring) (noting "Harvard blinds itself to other forms of applicant diversity, such as religion.").

Many universities throw away standardized test scores, whether applicants volunteer them or not, because universities say such information can result in racial discrimination. *See generally* Shaun Harper, *Eliminating Standardized Tests to Achieve Racial Equity in Post-Affirmative Action College Admissions*, Forbes (Jul. 9, 2023), https://www.forbes.com/sites/shaunharper/2023/07/09/eliminating-standardized-tests-to-achieve-racial-equity-in-post-affirmative-action-college-admissions/?sh=b4e76b7596c6.

And many universities throw out even criminal history, because they say such information can also result in racial discrimination. *See generally* Alia

Wong, *The Common App Will Stop Asking About Students' Criminal Histories*, The Atlantic (Aug. 18, 2018), https://www.theatlantic.com/education/archive/2018/08/common-app-criminal-history-question/567242/; Jeremiah Poff, *Biden Administration Urges Colleges to Stop Asking Applicants About Criminal History*, Wash. Exam'r (May 3, 2023), https://www.washingtonexaminer.com/policy/education/biden-admin-urges-colleges-criminal-history.

Yet universities do the exact opposite with race, finding all ways directly or via proxies to extract racial information from applicants. *See generally* Steven McGuire, *Can Harvard Use Application Essays to Discriminate by Race?*, Wall St. J. (Aug. 11, 2023), https://www.wsj.com/articles/can-harvard-use-application-essays-to-discriminate-by-race-unc-fair-admission-5638086f?ns=prod/accounts-wsj.

Because of the clear potential for misuse going forward that takes advantage of the huge hurdles families face to police a professionalized racial preference establishment, the Supreme Court should rule that racial data collection and usage by entities engaged in education-related activities be subject to the high standard of strict scrutiny.

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner's request for a writ of certiorari.

Respectfully submitted,

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