

No. 26-12

IN THE
Supreme Court of the United States

ASSOCIATION FOR EDUCATION FAIRNESS,
PETITIONER,

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION, ET AL., RESPONDENTS.

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

**BRIEF OF *AMICI CURIAE* AMERICAN CIVIL
RIGHTS PROJECT, MANHATTAN INSTITUTE,
HAMILTON LINCOLN LAW INSTITUTE, AND
CHINESE AMERICAN CITIZENS ALLIANCE
OF GREATER NEW YORK SUPPORTING
PETITIONER**

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QUESTION PRESENTED

Whether a plaintiff alleging that a school district implemented facially-neutral admissions criteria for a racially discriminatory purpose must show that the criteria produced a disparate impact on the targeted racial group before a court may consider evidence of discriminatory intent.

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INTEREST OF AMICI CURIAE¹

The American Civil Rights Project (the “ACR Project”) is a public-interest law firm dedicated to protecting, and where necessary restoring, the equality of all Americans before the law.

The Manhattan Institute for Policy Research (“MI”) is a nonpartisan public-policy research foundation whose mission is to develop and disseminate ideas that foster greater economic choice and individual responsibility. MI has long sponsored scholarship supporting educational excellence and racial nondiscrimination, including work by Thomas Sowell, Walter Williams, Seymour Fliegel, John McWhorter, Abigail and Stephan Thernstrom, Jay Greene, Marcus Winters, Jason Riley, and Wai Wah Chin.

Hamilton Lincoln Law Institute (“HLLI”) is a public-interest law firm dedicated to protecting free markets, free speech, limited government, and separation of powers, and to opposing regulatory abuse and rent-seeking. HLLI’s litigation has confronted the expansion of race-conscious decisionmaking beyond school admissions. *See Martin v. Blessing*, 571 U.S. 1040 (2013).

The Chinese American Citizens Alliance of Greater New York (“CACAGNY”) is a chapter of the Chinese American Citizens Alliance, the oldest Asian American advocacy group in the country. Its mission is to empower Chinese Americans, as citizens of the United States, by advocating for Chinese-American interests based on the principles of fairness and equal opportunity, guided by the

¹ No counsel for a party authored this brief in whole or in part, and no person or entity other than amici, their members, or their counsel made a monetary contribution intended to fund its preparation or submission. Counsel for all parties were timely notified of amici’s intent to file this brief.

ideals of patriotism, civility, dedication to family and culture, and the highest ethical and moral standards.

This case interests *amici* because it concerns constitutional principles central to legal and policy commitments *amici* share: educational excellence and equal treatment without regard to race. Several amici supported the petition in *Boston Parent Coalition for Academic Excellence Corp. v. School Committee for the City of Boston*, No. 23-1137, which raised a closely related question. CACAGNY is also the associational plaintiff in *Chinese American Citizens Alliance of Greater New York v. Adams*, 116 F.4th 161 (2d Cir. 2024), which remains active on remand after the Second Circuit rejected the Fourth Circuit’s aggregate-impact rule. The conflict among lower courts has since become both express and outcome-determinative.

SUMMARY OF ARGUMENT

This case asks whether a government may adopt facially neutral admissions criteria for a racially discriminatory purpose yet avoid any inquiry into that purpose because the targeted racial group remains comparatively successful in the aggregate. It asks if the Constitution’s guarantee of equal protection protects all Americans, or only Americans of low-performing races.

The Fourth Circuit says the latter, holding that high-performing races are categorically excluded from protection. Extending *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864 (4th Cir. 2023), it held below that Association for Education Fairness (“AFEF”) had failed to plead an “essential element” of its equal-protection claim—specifically, that Montgomery County has succeeded in reducing the enrollment at the specified magnet schools of the targeted Asian American

community below proportionality to their racial share of those schools' applicant pools. Pet. App. 3a–4a. That threshold ruling ended the case before the court considered AFEF's allegations of discriminatory purpose.

This result lacks any sound basis in (and is in fact foreclosed by) the Equal Protection Clause and this Court's cases. This Court recognizes the requirements of "our colorblind Constitution." *Allen v. Milligan*, 146 S. Ct. 1377, 1380 (2026). *Washington v. Davis* and *Village of Arlington Heights* hold that disparate impact standing alone generally does not prove purposeful racial discrimination or indicate a constitutional violation. They do not hold the inverse: that direct or circumstantial evidence of discriminatory purpose becomes legally irrelevant unless the challenged policy also drives the targeted group below a court-selected benchmark. *Arlington Heights* identifies impact as only one potential source of evidence in a broader inquiry into purpose.

The Fourth Circuit's rule also mistakes the nature of the constitutional right at issue. The Constitution guarantees individual Americans, not racial conglomerations, equal protection. A policy does not cease discriminating against an applicant because other members of that applicant's racial group overcame it. And racial balancing does not become lawful because officials have not yet pushed the targeted group below its share of an applicant pool or local population. A rule that immunizes a racial balancing program until it successfully overwhelms the superior merit of its targets is no equal-protection rule at all.

The Second and Third Circuits have now rejected the aggregate-impact prerequisite applied by the First and Fourth. *CACAGNY v. Adams*, 116 F.4th 161, 171–73 (2d

Cir. 2024);² *Sargent v. Sch. Dist. of Philadelphia*, 165 F.4th 727, 747–50 (3d Cir. 2026). The Third Circuit adheres to circuit precedent requiring proof of some discriminatory effect, but it held that aggregate underrepresentation is not the only permissible proof of that effect. The conflict is therefore clear under either formulation of the question: whether allegations of discriminatory purpose alone trigger strict scrutiny, or at minimum whether individualized exclusion and other evidence of actual effect may suffice without aggregate underrepresentation.

AFEF’s allegations illustrate why review is needed. Pet. App. 48a–79a. After Asian American enrollment in its selective magnet programs rose, Montgomery County Public Schools (“MCPS”) commissioned a study. MCPS treated Asian American success as “overrepresentation” to be remedied. MCPS announced a goal of making the programs “more reflective” of district demographics. MCPS rejected merely “blind and neutral” opportunity in favor of “controls” defining what the programs’ enrollees should “look” like. MCPS then adopted local norming and related devices that burdened Asian American students concentrated in high-performing schools. AFEF ultimately may or may not prove that the challenged lottery successfully achieved that race-discriminatory goal. But the Fourth Circuit should not be allowed to declare purpose evidence *irrelevant* at the pleading stage simply because it deems MCPS’s Asian students too gifted to be treated equally.

² CACAGNY is the associational plaintiff in that Second Circuit action, which—on remand—has since been restyled *CACAGNY v. Mamdani*, No. 1:18-cv-11657 (S.D.N.Y.). CACAGNY is also an associational plaintiff in a related case captioned *Chu v. Rosa*, No. 1:24-cv-00075 (S.D.N.Y.).

This Court has repeatedly held that racial balancing is “patently unconstitutional” and that “[w]hat cannot be done directly cannot be done indirectly.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 223, 230 (2023) (“*Harvard*”). It cautioned that universities “may not simply establish through application essays or other means the regime we hold unlawful today.” *Id.* at 230. Those principles do not countenance a rule that allows officials to pursue racial targets through proxies so long as the targeted group remains above an aggregate threshold.

The Court twice previously declined to confront the Fourth and First Circuits’ published roadmap of how to undermine its decision in *Harvard*. In the time since, even as some circuits have taken a wiser tack, other courts have followed the First and Fourth Circuits’ coaching. The result is legal unpredictability across the nation.

This case offers another opportunity. The Court should take it and use this case to prevent this legal and moral cancer from continuing to spread.

ARGUMENT

I. THE FOURTH CIRCUIT’S AGGREGATE-IMPACT RULE IMMUNIZES RACIAL BALANCING BY PROXY.

A. MCPS redesigned selective admissions to alter racial outcomes.

MCPS undertook a sustained effort to alter the racial composition of its magnet programs and mitigate the effects of its Asian students’ merit on outcomes.

MCPS had previously used an express racial classification in administering a magnet transfer program. The Fourth Circuit invalidated that policy as

unconstitutional racial balancing. *Eisenberg ex rel. Eisenberg v. Montgomery Cnty. Pub. Sch.*, 197 F.3d 123, 128–33 (4th Cir. 1999). For a time, MCPS thereafter used largely merit-based criteria—grades, a standardized cognitive-abilities test, and teacher recommendations—for its selective middle-school magnets. By the 2013–2014 school year, Asian American students constituted nearly half of magnet enrollment. Pet. App. 47a–48a.

That wouldn’t do. MCPS retained Metis Associates to study access to its special academic programs. The resulting report emphasized Black and Hispanic “underrepresentation” and Asian American “overrepresentation,” recommending devices designed to change who qualified: group-specific norms, comparison against same-school peers, noncognitive measures, and top-percentage mechanisms. Pet. App. 48a–51a.

Board members made their racial goal explicit. One hoped the programs would become “more reflective of our student population.” Pet. App. 57a–58a. Another said MCPS should not be content with “creating opportunity and having that be blind and neutral,” but should impose “controls” so that choices would “reflect the community” and address demographic disparities. Pet. App. 56a. He urged the Board to define “what we want those programs to look like.” Pet. App. 57a.

MCPS implemented a pilot “field test” of peer-grouping and local-norming to verify whether they would penalize Asian students and reduce their magnet enrollment as anticipated. Because these students were concentrated in high-performing elementary schools, those mechanisms—as intended—made it harder for them to qualify. Pet. App. 58a–67a. The results were substantial: the Asian American share of invitees to both upcounty programs fell by half, and the share at the

Takoma Park STEM program fell from 45.6 percent in the three pre-test years to 31.5 percent during the three field-test years. Pet. App. 75a–76a.

AFEF sued. In denying MCPS’s first motion to dismiss, the district court held that AFEF’s complaint plausibly alleged both disparate effect and discriminatory motive: MCPS “set out to increase and (by necessity) decrease the representation of certain racial groups” to align program enrollment with district demographics. *AFEF v. Montgomery Cnty. Bd. of Educ.*, 560 F. Supp. 3d 929, 953 (D. Md. 2021).

During the litigation, MCPS replaced the “field test” with the “Pandemic Plan,” a lottery open to students meeting locally normed achievement thresholds. Pet. App. 77a–79a. AFEF amended its complaint to challenge that successor plan, alleging that it preserved the same local-norming mechanism in service of the same racial objectives apparent in the “field test.” The district court nonetheless dismissed the amended complaint, and the Fourth Circuit affirmed, solely because—under *Coalition for TJ*—AFEF had not plausibly alleged the required aggregate disparate impact. Pet. App. 3a–4a, 34a–38a.

That procedural history matters. The question here is not whether MCPS ultimately adopted the Pandemic Plan for a discriminatory purpose. Nor need this Court now decide whether every allegation concerning the earlier “field test” carries over as evidence against the purposes of MCPS’s successor lottery. Today’s question is instead whether a court may *refuse even to assess* a government’s discriminatory purposes whenever a targeted group remains above an aggregate benchmark. The Fourth Circuit’s answer turns a blind eye to the very invidious intentional discrimination proscribed by this Court in *Arlington Heights*.

B. Aggregate racial success cannot erase discrimination against individual applicants.

The Fourth Circuit derived its current rule in *Coalition for TJ*. There, the panel majority held that a facially neutral admissions plan imposed no cognizable disparate impact on Asian American students if their share of offers still exceeded their share of the applicant pool. 68 F.4th at 879–82. It treated that aggregate comparison as dispositive even though the policy sharply reduced Asian American admissions and the record contained extensive evidence that the Board chose the policy to achieve that reduction.

Applied here, that rule meant AFEF’s claim lacked an “essential element” before any consideration of motive. Pet. App. 4a. But aggregate representation answers the wrong question. The Equal Protection Clause protects “any person,” U.S. Const. amend. XIV, § 1, and embodies the “simple command that the Government must treat citizens as individuals, not as simply components of a racial . . . class.” *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (quotation omitted). An individual denied an equal opportunity because of race is not made whole because other members of the same race secure admission.

This Court has accordingly described the relevant injury as the denial of equal treatment resulting from the imposition of a discriminatory barrier, not merely the ultimate loss of a benefit. *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003). If officials deliberately choose a proxy to reduce the chances of applicants from a targeted race, each applicant subjected to that barrier suffers the constitutional injury even if, in the aggregate, the policy “underperforms in an unconstitutional mission.” *CACAGNY*, 116 F.4th at 173.

Aggregate statistics can be probative of intent. They may reveal a stark pattern, help prove purpose, or demonstrate that a challenged rule caused real harm. But they cannot be the exclusive measure of whether intentional discrimination exists at all. Otherwise, a government could pursue explicitly racial objectives and assert the resulting interim racial balances as a defense. That would not police racial balancing as the Constitution requires; it would enforce it.

II. ARLINGTON HEIGHTS DOES NOT MAKE AGGREGATE UNDERREPRESENTATION A GATEKEEPING ELEMENT.

A. Discriminatory purpose subjects a facially neutral policy to strict scrutiny.

This Court’s rule is direct: laws “race neutral on their face” are subject to strict scrutiny when “motivated by a racial purpose or object.” *Miller*, 515 U.S. at 913. The constitutional vice is the government’s consideration of race in decisionmaking. A facially neutral mechanism does not receive rational-basis review merely because the government has encoded its racial objective in geography, school-level norms, socioeconomic factors, or another proxy.

Washington v. Davis, 426 U.S. 229 (1976), established that disproportionate impact alone ordinarily does not prove an equal-protection violation. *Arlington Heights* then explained how courts should determine whether discriminatory purpose motivated facially neutral action. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977). The impact of official action is an “important starting point,” and in rare cases a stark pattern may be decisive. *Id.* at 266. But the Court immediately identified other relevant evidence: historical

background, the sequence of events, departures from normal procedure or substance, legislative or administrative history, and statements by decisionmakers. *Id.* at 267–68. The list was expressly nonexhaustive. *Id.* at 268.

Nothing in either *Washington* or *Arlington Heights* transformed aggregate impact into a freestanding requirement that must be established before a court may consider direct evidence of a discriminatory purpose. That inversion transforms recognition of evidence *sufficient* to infer intent into a limitation on when directly demonstrated discriminatory intent may even be *considered*.

The First and Fourth Circuits nonetheless require challengers to clear an aggregate-impact threshold. *Boston Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Boston*, 89 F.4th 46, 58–62 (1st Cir. 2023); *Coal. for TJ*, 68 F.4th at 879–82. In both cases, that rule made powerful evidence of racial purpose legally insufficient because Asian American students continued to outperform other groups after officials changed the rules to harm them.

Two members of this Court identified the defect when cert. was denied in *Coalition for TJ*: the rule “effectively licenses official actors to discriminate against any racial group with impunity as long as that group continues to perform at a higher rate than other groups.” 146 S. Ct. 541, 545 (2024) (Alito, J., joined by Thomas, J., dissenting from denial of certiorari). When the same issue returned in *Boston Parent Coalition*, they again explained that the lower courts had “mistakenly treated evidence of disparate impact as a necessary element” even though this Court “never said as much.” 145 S. Ct. 15, 17 (2024) (Alito, J., joined by Thomas, J., dissenting from denial of

certiorari). Justice Gorsuch separately expressed “significant concerns” about the First Circuit’s analysis. *Id.* at 15 (Gorsuch, J., respecting denial of certiorari).

AFEF crystallizes the issue. The court below openly treated aggregate disparate impact as an essential element of an equal protection claim and affirmed dismissal on that ground without considering whether AFEF’s complaint otherwise plausibly alleged intentional discrimination. Pet. App. 3a–4a. Reversal would require only remand for application of the correct standard.

B. At minimum, aggregate underrepresentation is not the *only* permissible proof of discriminatory effect.

The Court does not face a pure dichotomy, where its only options are an intent-only rule or the Fourth Circuit’s aggregate prerequisite to resolve this case. Even assuming some showing that the challenged policy affected the plaintiff is required (perhaps to demonstrate constitutional standing), the First and Fourth Circuits err by making aggregate underrepresentation the exclusive proof of such effect.

The Second Circuit rejected that proposition in *CACAGNY*. The challenged New York City plan used facially neutral eligibility criteria to exclude Asian American applicants from a special admissions pathway. Asian American admissions nevertheless increased in some years. 116 F.4th at 168–69. The court held that the absence of aggregate underrepresentation did not immunize a racially motivated policy from strict scrutiny when particular applicants were excluded because of race. *Id.* at 171–73.

The Third Circuit has taken the same narrower position. In *Sargent*, it acknowledged circuit precedent

requiring both purpose and some discriminatory effect, but rejected the contention that effect must be shown through one aggregate comparator. 165 F.4th at 747–50. “While evidence of an aggregate discriminatory impact may satisfy the ‘discriminatory impact’ inquiry,” it held, “it is not the only permissible form of proof.” *Id.* at 750. Individualized harm and other evidence that the challenged policy actually operated against a plaintiff may suffice. *Id.* at 748–50.

The split is therefore mature as well as unavoidable. In the First and Fourth Circuits, allegations that officials used a facially neutral proxy for a racial purpose may be dismissed without consideration unless the challenged policy brings the targeted group below the selected aggregate benchmark. The Second and Third Circuits disagree, allowing the same allegations to proceed based on individualized exclusion or other evidence of actual effect.³ A constitutional guarantee’s application cannot vary that sharply by geography.

C. The aggregate rule turns racial balance from forbidden objective into safe harbor.

The practical consequence of the Fourth Circuit’s rule is perverse. Suppose officials decide that a selective

³ Even in circuits that have rejected the aggregate-impact rule, however, the First and Fourth Circuits’ rulings continue to work mischief. Although the written order provides only that the motion was denied for reasons stated on the record, it appears that the court relied on the contrary approach taken by the First and Fourth Circuits to deny preliminary injunctive relief to a Chinese American mother whose son was denied admission to Stuyvesant High School through policies New York City adopted in 2019 explicitly to rebalance the racial demographics of the city’s Specialized High Schools. See Order, *Chen v. Mamdani*, No. 1:26-cv-03355 (S.D.N.Y. July 21, 2026).

program has too many students of one race, model facially neutral alternatives to achieve their preferred racial results, and select an alternative precisely to reduce that race's admissions. Under the rule below, strict scrutiny does not apply so long as the targeted group remains above its share of the applicant pool. The more successful the group before the policy, the more a government may burden its members before any court need care.

That logic does not merely tolerate racial balancing; it enforces a racial-balance baseline. It assumes that racial groups should achieve similar success rates regardless of differences in preparation or qualifications, then treats any remaining above-average success by the targeted group as proof that intentional discrimination has not gone far enough to matter. The Equal Protection Clause contains no authorization for courts or school boards to handicap applicants until racial equalization emerges.

Nor can the rule be defended as avoiding an "immutable quota" based on the prior status quo. A before-and-after comparison need not be conclusive, and no single statistic need control. But a sharp decline following a policy's adoption in service of a racial objective is plainly relevant to the question whether that effect was intended. Circumstantial evidence is evidence.

So too are statements, simulations, procedural departures, policy history, and individualized burdens. A half-century ago, *Arlington Heights* called for consideration of the whole record, not suppression of every form of evidence until a racial aggregate crosses a judicially selected line.

The correct rule is not complicated. A plaintiff must plead and ultimately prove purposeful discrimination, injury, and causation. Aggregate statistics may help prove those matters. But government cannot make racial

purpose irrelevant by pointing to the continued success of other people who share the plaintiff's race.

III. INTENTIONAL RACIAL BALANCING CANNOT SURVIVE STRICT SCRUTINY.

The aggregate-impact threshold is especially indefensible because the governmental objective here—racial balancing—is one this Court has repeatedly condemned. “[O]utright racial balancing” is “patently unconstitutional.” *Harvard*, 600 U.S. at 223 (quoting *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 311 (2013)). And because “the prohibition against racial discrimination is ‘levelled at the thing, not the name,’” “[w]hat cannot be done directly cannot be done indirectly.” *Id.* at 230 (quoting *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325 (1867)).

Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007), applied those principles in K–12 education. The controlling portion of the Chief Justice’s opinion subjected racial classifications in student assignment to strict scrutiny and recognized only two interests previously held compelling in education: remedying the effects of the government’s own past intentional discrimination and, under then-existing higher-education precedent, obtaining the educational benefits of a broadly defined diversity. *Id.* at 720–25. Neither permits a school district to pursue demographic proportionality for its own sake.

Four Justices further explained that districts may not work backward from desired racial demographics. Matching school enrollment to the surrounding district’s racial composition is the paradigmatic form of racial balancing, unsupported by any pedagogical account of the level of diversity supposedly required. *Id.* at 726–30

(plurality opinion). Justice Kennedy likewise rejected racial classifications of individual students and distinguished permissible efforts to avoid racial isolation or pursue diversity through general policies from engineering proportional representation. *Id.* at 788–89, 797–98 (Kennedy, J., concurring in part and concurring in the judgment).

MCPS’s statements speak of programs reflecting district demographics, “controls” rather than blind and neutral opportunity, and defining what officials wanted the programs to look like. Pet. App. 56a–58a. The Metis Report labeled Asian American enrollment “overrepresentation” and recommended mechanisms designed to alter racial group outcomes. Pet. App. 49a–51a. Neither that objective nor the means adopted can satisfy strict scrutiny.

Earlier Fourth Circuit precedent reflects these principles. It invalidated MCPS’s race-based transfer policy as racial balancing in *Eisenberg*, 197 F.3d at 128–33. It held in *Tuttle v. Arlington Cnty. Sch. Bd.*, 195 F.3d 698, 701, 706–07 (4th Cir. 1999), that a school board could not choose admissions criteria to approximate the racial distribution of its district. A government does not transform an interest forbidden under those cases merely by replacing an express classification with a proxy selected to serve the same end.

IV. “RACE-NEUTRAL” CRITERIA DO NOT LICENSE RACE BALANCING.

The First and Fourth Circuits have attempted to justify their approach by invoking decisions that discuss race-neutral alternatives. The concurrence below in *Coalition for TJ*, for example, asserted that this Court has

“repeatedly blessed seeking to increase racial diversity in government programs through race-neutral means.” 68 F.4th at 891 (Heytens, J., concurring). The First Circuit relied on similar reasoning in *Boston Parent Coalition*. 89 F.4th at 60–62.

Those decisions conflate the steps of strict scrutiny. In *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493, 507–10 (1989), *Grutter v. Bollinger*, 539 U.S. 306, 326, 339–40 (2003), and *Parents Involved*, 551 U.S. at 720, 733–35, the Court applied strict scrutiny to policies that classified persons by race. Its discussions of race-neutral alternatives addressed narrow tailoring after the government asserted a potentially compelling interest. The Court asked whether the government could pursue a lawful end using less discriminatory classifications. It did not hold that officials may adopt facially neutral proxies for an unlawful racial-balancing end and thereby avoid scrutiny altogether.

That distinction is fundamental. A school district may identify neutral educational objectives—such as broadening outreach, improving elementary-school preparation, eliminating arbitrary barriers, or recognizing forms of achievement relevant to the curriculum—and adopt criteria genuinely designed to serve them. Under *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256 (1979), officials may know that such policies could affect demographic outcomes without violating the Constitution, so long as they did not adopt the policies because of those effects. But a policy chosen *because* it burdens a racial group, or because it is *expected* to produce a preferred racial balance, presents a different constitutional question. The mechanism’s facial neutrality does not cleanse its illicit purpose. States may not rely on

“pretext[s] for racial discrimination.” *Feeney*, 442 U.S. at 272.

Otherwise, the Constitution would regulate labels rather than substance. Officials forbidden to reserve seats by race could obtain the same result by identifying a sufficiently precise proxy, announcing the desired proxy demographics, and stopping just short of depressing the targeted group below the applicant-pool benchmark. But *Students for Fair Admissions* forecloses that evasion: the Equal Protection Clause’s prohibition is directed at racial discrimination itself, not the name attached to the device. 600 U.S. at 230.

The Court should grant review and make clear that race-neutral means do not create a safe harbor for race-discriminatory ends. If discriminatory purpose is plausibly alleged, courts must consider the evidence and apply the scrutiny this Court’s precedents require. And even if some showing of effect is necessary, individualized exclusion and other evidence of actual harm cannot be displaced by a single aggregate racial comparator.

CONCLUSION

The Equal Protection Clause promises each person equal treatment without regard to race. It does not permit governments to burden an applicant because of race until the applicant’s racial group jointly falls below a statistical benchmark. Nor does it permit courts to disregard evidence of racial purpose whenever a targeted group remains comparatively successful.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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