

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* Asian American Coalition for
Education, Asian American Legal Foundation,
Asian American Parents Wootton, Asian American
Rights Association, Boston Parent Coalition for
Academic Excellence, Californians for Equal Rights
Foundation, Coalition for TJ, Equal Rights for All
PAC, San Diego Asian Americans for Equality,
Silicon Valley Chinese American Association
Foundation, and United Against Racism in
Education, in Support of Petitioner**

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THE INTEREST OF *AMICI CURIAE* ¹

This case, involving whether the focus of equal protection is on the rights of the individual rather than the disparate impact on an arbitrarily-defined group, is of critical importance to *amici curiae*, Asian American Coalition for Education, Asian American Legal Foundation, Asian American Parents Wootton, Asian American Rights Association, Boston Parent Coalition for Academic Excellence, Californians for Equal Rights Foundation, Coalition for TJ, Equal Rights for All PAC, San Diego Asian Americans for Equality, Silicon Valley Chinese American Association Foundation, and United Against Racism in Education. *Amici* and their constituents, who are Americans of Asian ethnic descent, believe it is vitally important that this Court grant certiorari and provide timely clarification that in education the Fourteenth Amendment to the United States Constitution protects individuals, not groups.

Asian Americans have historically faced discrimination and even violence because of their ethnicity. In the educational arena, Asian Americans have been subjected to egregious discrimination based on their ethnicity for almost as long as Asians have been in America. At many selective schools,

¹ No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amici* or their counsel, make a monetary contribution intended to fund the preparation or submission of this brief. *Amici Curiae* have timely provided notice of their intent to file this brief to counsel for all parties.

Asian American individuals have been subjected to admissions processes that have denied them equal access to opportunity because of their skin color, often under the argument that members of their “group” were already sufficiently represented. Many of *Amici’s* constituents have children who were denied entrance to or who may one day aspire to attend magnet programs in Montgomery County, Maryland or other selective public schools with similar discriminatory admissions practices. *Amici* believe the attack on equal protection in this case is also an assault on the meritocracy and educational excellence that are crucial to this nation’s future.

The Asian American Coalition for Education (“AACE”) is an apolitical, non-profit, national alliance. It is devoted to promoting equal rights for Asian Americans in education and education-related activities. The leaders of AACE and its supporting organizations are Asian American community leaders, business leaders and, most importantly, parents. They are not professional “civil rights advocates” and do not get funding from large corporations or multibillion dollar foundations, but were forced to become civil rights advocates to expose, stop and prevent the discrimination against their communities and children that the “professionals” ignore, downplay and facilitate. In similar *amici* filings, AACE has represented more than 300 Asian American organizations. More information on AACE can be found at

<http://asianamericanforeducation.org>.

The Asian American Legal Foundation (“AALF”), a non-profit organization based in San Francisco, was founded in 1994 to protect and promote the civil rights of Asian Americans. AALF focuses its work on situations where Asian Americans are discriminated against for a purportedly benign purpose and where high profile groups and individuals deny that discrimination even exists. Members of AALF were instrumental in the struggle to end discrimination against Chinese American students in the San Francisco, California public school system. *See Ho v. San Francisco Unified Sch. Dist.*, 147 F.3d 854 (9th Cir. 1998). More information on AALF can be found at <http://www.asianamericanlegal.com>.

Amici Curiae ask this Court to hear their arguments in support of Petitioner.

SUMMARY OF ARGUMENT

Amici Curiae are appalled that the Montgomery County Board of Education (“Board”) has adopted an admissions plan designed to reduce Asian American enrollment at the magnet middle school programs of the Montgomery County Public Schools (“MCPS”), and urge this Court to grant certiorari and examine that plan under strict scrutiny.

It is beyond reasonable dispute that the School Board’s goal was to increase black and Hispanic enrollment by reducing admission of Asian American

students. It tried various methods, scrapping merit criteria in favor of carefully-selected racial proxies, finally settling on a lottery system that forces Asian American students, who are clustered in several feeder elementary schools, to compete against each other and score significantly higher on relevant metrics than students at other schools to qualify for the magnet program lottery. The School Board's illegal racial motives throughout merit strict scrutiny, which this Court has long taught is precisely designed to "smoke out" illegitimate consideration of race.

The Fourth Circuit's ruling that the Board's admissions plan cannot be challenged because there is no "disparate impact" on Asian Americans as a whole ignores that the Constitution protects individuals not groups. Enrollment of Asian Americans has dropped dramatically under the new plan, exactly as the Board intended, meaning that many individual students were denied admission because of their race. Furthermore, in this country "Asian American" is not a monolithic ethnicity but comprises more than 20 different ethnic groups, each of which will be affected differently under the Board's plan, leaving the effect on the individual as the only reasonable focus for the constitutional inquiry.

This Court should also consider that the School Board's depiction of Asian Americans as "overrepresented" and lacking in "diversity" is not only incorrect and an unconstitutional

characterization, it is also a message that has historically caused immense suffering to Asian Americans during their long history in this country, where they have often faced discrimination rationalized by depicting them as featureless members of a “yellow horde,” lacking the human attributes of other Americans, “overrepresented” and not deserving to be treated as individuals.

The pernicious view that Asian Americans are “overrepresented” and not contributors to diversity causes real and tangible harm, not only to children who are excluded from educational opportunities, but also through increased violence against members of Asian American communities across the nation.

The Board’s watering down of merit-based selection criteria at its magnet programs in the name of skin-deep “diversity” is also counter-productive. America exists in a competitive, often hostile world. If it is to retain its leading position it needs to place more emphasis on merit, not less. Attempts to destroy the academic character of selective schools to promote racial balancing are not only unconstitutional, they are misguided in terms of those they purport to help. Deficiencies in early education cannot be addressed by racially balancing magnet school programs. All that would accomplish is to destroy those schools’ academic natures, depriving Americans of all ethnicities of a valuable public resource. Then, only the wealthy would have access to superior education.

For these and other reasons, this Court should grant certiorari so that it can examine the MCPS magnet program admissions plan under strict scrutiny.

ARGUMENT

I. THIS COURT SHOULD NOT ALLOW A SCHOOL DISTRICT TO EVADE STRICT SCRUTINY BY MANIPULATING FACIALLY-NEUTRAL ADMISSIONS CRITERIA TO ACHIEVE ITS DESIRED RACIAL OUTCOME.

A. The Montgomery County Admissions Plan Was Deliberately Crafted to Reduce Asian American Enrollment.

As the record shows, the MCPS Board's goal in changing the admissions process for its magnet school programs was to "racially balance" enrollment by reducing Asian American participation. As the district court noted, "Over the years, MCPS grew increasingly concerned that the magnet programs and other academic programming did not align with the racial demographics of the larger MCPS student body." App. 10a.

The MCPS Board engaged an outside consulting firm to help it find facially-neutral proxies that could be manipulated to reduce Asian American enrollment at its four magnet middle programs, so as

to increase the representation of African American and Hispanic students and provide “racial balance.” App. 49a-52a, 56a-58a.² The prior merit-based admissions system was scrapped and under the plan ultimately reached, Asian Americans students, who were primarily clustered in several higher-performing elementary schools, were required by “local norming” to score significantly higher than those at other schools on standardized metrics in order to participate in the new lottery created for the magnet programs. App. 16a-17a, 78a-79a. “[L]ocal norming makes it harder for Asian-American students to enter the lottery pool.” App. 80a.

By deliberately crafting changes to enrollment rules so as to reduce the “overrepresentation” of Asian Americans, MCPS has “demean[ed] the dignity and worth” of Asian Americans by judging them by ancestry instead of by their “own merit and essential qualities.” *Rice v. Cayetano*, 528 U.S. 495, 517 (2000). Its racial motives are illegal, and the racial balancing it achieved is something this Court has long taught is forbidden: “We have many times over reaffirmed that ‘[r]acial balance is not to be achieved for its own sake.’” *Parents Inv. In Comm. Sch. v. Seattle School No. 1*, 551 U.S. 701, 127 S. Ct. 2738, 2757 (2007) (citing cases).

The situation is similar to that in *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), where this Court found

² References to “App.” are to Petitioner’s Appendix.

that San Francisco's facially-neutral laundry licensing ordinance was impermissibly crafted to target Chinese Americans:

Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances...the denial of equal justice is still within the prohibition of the Constitution.

Id. at 373-74. Here, as in *Yick Wo*, MCPS should not be allowed to practice racial discrimination just because it does so using facially-neutral proxies. This Court should grant certiorari so that it can examine the admissions plan under strict scrutiny, something that the courts below failed to do. See *Johnson v. California*, 543 U.S. 499, 505 (2005) (“We have insisted on strict scrutiny in every context...”)

In analogous redistricting cases, “[s]trict scrutiny applies when race is the ‘predominant’ consideration in drawing district lines...” *Shaw v. Hunt*, 517 U.S. 899, 907 (1996). That same reasoning should apply here, where race was undeniably the predominant consideration in changing over to a “local normed” rule in which clusters of students at elementary schools are now essentially competing against

themselves for places in a county-wide lottery. As this Court has also stated, “outside the districting context, statutes are subject to strict scrutiny under the Equal Protection Clause not just when they contain express racial classifications, but also when, though race neutral on their face, they are motivated by a racial purpose or object.” *Miller v. Johnson*, 515 U.S. 900, 913 (1995).

B. The Lower Courts’ Insistence on a “Disparate Impact” Was Wrong, Given the Individual Right at Issue and Given that “Asian” Comprises Many Different Ethnic Groups.

It was wrong for the courts below to reason that there was no cognizable injury because, even though it declined dramatically, total Asian American enrollment was still not below the group’s percentage of the applicant pool. App. 24a-26a. As this Court has explained, “the Constitution protect[s] persons, not groups.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Here, it is undeniable that the plan was crafted to reduce Asian American enrollment by, among other things, requiring *individual* Asian American students on the average to have higher metrics than others in order to qualify for the magnet program lottery. Thus, the focus should have been on the impact to the individual not the “disparate impact” on a group.

The lower courts also failed to consider that

“Asian Americans” are not a single ethnic group, but “trace their roots to more than 20 countries in East and Southeast Asia and the Indian subcontinent, each with unique histories, cultures, languages and other characteristics.” Abby Budiman & Neil G. Ruiz, *Key Facts about Asian Americans, a Diverse and Growing Population*, Pew Research Center (April 21, 2021), found at <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/> (last visited 8/24/2026).

Between each of these many “Asian” groups there is considerable variance in terms of educational tradition; and within each, as might be expected, there are extreme differences in family background and resources, including academic preparedness. Indeed, Asian Americans have the highest income inequality of any racial group in the United States. *See Income Inequality in the U.S. Is Rising Most Rapidly Among Asians*, Pew Research Center, July 12, 2018, found at <https://www.pewresearch.org/social-trends/2018/07/12/income-inequality-in-the-u-s-is-rising-most-rapidly-among-asians/> (last visited 8/24/2026). Thus, for some of these “Asian” groups, their representation at the magnet school programs likely did fall below their percentage of the applicant pool as a result of the new admissions plan. Again, the only meaningful constitutional focus is on the individual student, not some arbitrarily-defined group.

**II. THE MONTGOMERY COUNTY
ADMISSIONS PLAN IS PART OF AN
ACTIVIST “RACIAL EQUITY”
MOVEMENT THAT THREATENS OUR
NATION’S REMAINING MERIT-BASED
SCHOOLS.**

The situation with Montgomery County’s magnet programs is similar to what has been happening to other selective public schools nationwide, where proponents of racial balancing seek to eliminate merit-based admissions systems that have been in place for generations. Such attempts to “dumb down” magnet middle and high school programs are troubling not only because they violate the Constitution but also because they threaten American technological supremacy.

- **San Francisco’s Lowell High School.** First voting to halt consideration of test scores and grades as a “temporary” Covid measure, the San Francisco School Board then voted to make the change permanent. “On February 9, 2021, the Board ... made that change to a lottery-based system permanent, citing ‘pervasive systemic racism’ and the school’s lack of diversity as reasons.” *See Lowell High School / Lottery Based Admissions*, Wikipedia, found at [https://en.wikipedia.org/wiki/Lowell_High_School_\(San_Francisco\)](https://en.wikipedia.org/wiki/Lowell_High_School_(San_Francisco)) (last visited 8/24/2026). Two years later, after plummeting student performance and a recall of three board members, merit-based

admission was re-instated—at least for now. *Id.* The struggle is expected to continue, as the San Francisco Board of Education is presently exploring ways to incorporate “racial equity” into the school assignment policy.

In San Francisco, as in Montgomery County, proponents of racial balancing seek to increase “diversity” by limiting Asian American enrollment. However, far from discriminating against anyone, Lowell, like Montgomery County’s magnet programs, reached across racial and socioeconomic lines to enable children of all backgrounds to excel in a public school environment open to all:

Lowell’s merit-based admissions did not consider (much less discriminate based on) race. To get into Lowell, a student needed only to attend school consistently, do their assigned work, and study enough to achieve good grades and pass their proficiency exams. All of that can be accomplished by students of any race.

Diane Yap, *SFNAACP Fails Black Students*, Critical Rice Theory (Dec. 22, 2021), found at <https://dianey.substack.com/p/sfnaacp-fails-black-students> (last visited 8/24/2026).

- **New York’s Specialized High Schools.** New York’s eight selective specialized high schools come under perennial attack, always fueled by the

accusation that Asian Americans and whites are “overrepresented.” See *Expelling Asian Americans From Top Schools Proves NYC Education Is Off The Rails*, New York Post, May 3, 2021), found at <https://nypost.com/2021/05/03/expelling-asian-americans-from-top-schools-proves-nyc-education-is-off-the-rails/> (last visited 8/24/2026). “Anti-Asian violence in New York right now is more than random street-corner sucker punches and terrifying subway shoves. It’s also the deliberate disassembly of meritocratic public education under the guise of ethnic equity...” *Id.*

- **Thomas Jefferson High School, Virginia.** With the goal of mirroring the racial “diversity” of Northern Virginia, the Fairfax County School Board adopted an admission plan that scrapped the entrance exam, capped admission from each middle school at 1.5%, and gave bonus points for “Experience Factors.” See *Thomas Jefferson high School Escaped The Supreme Court — And Others Are Eager To Follow*, Politico (2/23/2024), found at <https://www.politico.com/news/2024/02/23/race-in-school-admissions-legal-battles-supreme-court-00142980> (last visited 8/24/2026). There, as here, the admissions plan was crafted to reduce Asian American enrollment using proxies, and the message sent by school officials was that Asian Americans were “overrepresented” and lacking in “diversity.”

- **Boston’s Exam Schools.** Similar to the situation in Montgomery County, the Boston school

district in 2020 scrapped its generations-old merit-based admission system at its prestigious magnet high schools—Boston Latin Academy, Boston Latin School, and the John D. O’Bryant School of Mathematics and Science—and took advantage of Boston’s neighborhood racial demographics to set up a quota system using zip code blocks that “racially balanced” the magnet schools by requiring students from predominantly Asian American and white neighborhoods to attain a significantly higher GPA for admission than students from black and Hispanic neighborhoods. *See Boston Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for Boston*, 89 F.4th 46 (1st Cir. 2023); Molly Farrar, *Families Continue To Fight BPS Exam School Admissions Policy...*, Boston.Com (5/20/2026), found at <https://www.boston.com/news/local-news/2026/05/20/families-continue-to-fight-bps-exam-school-admissions-policy-after-judge-rules-no-discrimination-against-white-asian-students/> (last visited 8/24/2026).

Unless the present political trend of elevating skin-deep diversity over individual merit is stopped, it will lead to the elimination of all public academic middle and high schools. That would destroy a vital public resource, leaving only the wealthy with access to academic enrichment.

**III. ELIMINATING OBJECTIVE CRITERIA
FOR ADMISSION TO MAGNET
SCHOOLS BENEFITS NO ONE, AND
WILL ONLY PERPETUATE RACIAL
DIVISIONS WHILE UNDERMINING
AMERICA'S COMPETITIVENESS.**

Common sense should tell us that if some ethnic groups are “underrepresented” at an academic school where admission is based on grades and test scores, racially balancing enrollment is not going to fix the underlying K-8 educational deficiencies; it will only result in an admissions policy that trammels individual rights while obfuscating the actual problems. Advocates of racial balancing are not using common sense. If America is to retain its position as the world’s technology and business leader, it must continue to value and encourage academic achievement. *See Harvard Warns That Chinese Tech Is Rapidly Overtaking American Capabilities*, The Byte, found at <https://futurism.com/the-byte/harvard-report-china-tech> (last visited 8/24/2026). “In some races, [China] has already become No 1,’ reads the report. ‘In others, on current trajectories, it will overtake the US within the next decade.” *Id.*

China’s recent history furnishes a cautionary example illustrating the danger in elevating politicized “equity” over merit. “During China’s Cultural Revolution, Chinese dictator Mao Zedong abolished China’s college entrance exam in order to bring “class equity” to workers, peasants, and

soldiers.” Yukong Zhao, *The Assault On Meritocracy Helps No One* (Orange County Register, June 3, 1921) found at <https://www.ocregister.com/2021/06/03/the-assault-on-meritocracy-helps-no-one/> (last visited 8/24/2026). “After destroying meritocracy, China educated millions of revolutionaries who could not conduct research or manage enterprises.” *Id.* “As a consequence, China’s technological innovation stalled, and its economy rapidly collapsed.” *Id.* “In 1977, Chinese leader Deng Xiaoping wisely restored meritocracy [including] the college entrance exam.” *Id.* “Since then, China has rapidly become a global superpower in technological innovation.” *Id.*

China’s present growing technological prowess already threatens America’s supremacy in multiple disciplines. China presently leads in robotics. See *Humanoid ‘Olympics’ Reveal Why The US Can’t Compete With China’s Robots*, New Atlas (Aug. 24, 2026), found at <https://newatlas.com/ai-humanoids/humanoid-games-chinas-robots/> (last visited 8/24/2026). In January 2025, the Chinese artificial intelligence (AI) startup DeepSeek released its efficient reasoning model R1, sending shockwaves through the American tech industry. *How China’s New AI Model Deepseek Is Threatening U.S. Dominance*, CNBC Tech (Jan. 24, 2025), found at <https://www.cnn.com/2025/01/24/how-chinas-new-ai-model-deepseek-is-threatening-us-dominance.html?&doc=108093228> (last visited 8/24/2026). In July 2026, China’s AI firms delivered an even bigger

jolt. As Fortune reported, “China’s Moonshot, Z.AI, and DeepSeek are challenging U.S. AI labs—and beating them on cost.” Fortune Magazine – China, found at [https:// fortune. com/2026/07/26 /china-moonshot-deepseek-zai-kimi-challenging-us-ai-cost/](https://fortune.com/2026/07/26/china-moonshot-deepseek-zai-kimi-challenging-us-ai-cost/) (last visited 8/24/2026).

America’s AI lead is rapidly eroding, with China’s AI models showing striking advantages in reasoning and logic, which depend on exceptional STEM talent, especially mathematics. Education is key. Although American scientists pioneered the AI revolution, the United States has become increasingly dependent on foreign STEM talent. In July 2025, Meta hired 11 top AI researchers for its new Superintelligence Lab—all of them immigrants. *No American Grads On Meta’s Top AI Team*, Economic Times (July 4, 2025), found at [https:// economictimes.indiatimes.com/ nri/latest-updates/no-american-grads-on-metas-top -ai-team- all-11-hires-are-immigrants/articleshow/ 122247213.cms ?from=mdr](https://economictimes.indiatimes.com/nri/latest-updates/no-american-grads-on-metas-top-ai-team-all-11-hires-are-immigrants/articleshow/122247213.cms?from=mdr) (last visited 8/25,2026).

Clearly, America badly needs meritocracy and educational excellence to remain competitive; yet, MCPS and other similar institutions are doing all they can to destroy both, creating a severe shortage in STEM talent in American students. This self-destructive trend needs to be reversed before it is too late.

America was founded on the principle of meritocracy. While some proponents of racial

balancing want to pretend that in education only Asian Americans still believe in meritocracy, in fact that is not so, as shown by a Pew Research Center poll. “The survey . . . asked more than 10,000 respondents what factors should matter for college admissions. In a landslide, respondents favored academic achievement over race and gender.” *Americans for Merit-Based Admissions*, Wall Street Journal (April 28, 2022), found at <https://www.wsj.com/articles/americans-for-merit-based-admissions-pew-research-poll-ibram-x-kendi-11651181826> (last visited 8/24/2026). Nearly three of four said race or ethnicity should not be a factor in admissions. That included 59% of blacks, 68% of Hispanics, 63% of Asians and 62% of Democrats. *Id.*

Educational deficiencies in elementary and middle school education should certainly be addressed. All children, of whatever ethnicity, deserve to be nurtured, educated and guided toward academic success. However, racial politics in public magnet program admissions is not the answer.

IV. THE RATIONALE USED TO JUSTIFY DISCRIMINATION IN MONTGOMERY COUNTY ECHOES THE REPELLANT STEREOTYPES HISTORICALLY USED TO JUSTIFY DISCRIMINATION AGAINST ASIAN AMERICANS.

A. Throughout Much of America's History, Discrimination Against and Persecution of Asian Americans Was the Shameful Norm.

The attitude that Asian Americans are “overrepresented” and not contributors to “diversity” evokes the stereotypes historically used to justify discrimination against Asian Americans, when they were marginalized as somehow lacking in ordinary human qualities and denied opportunities open to others. *See, e.g.,* Charles McClain, *In Search of Equality* (Univ. of Cal. Press 1994); Elmer Clarence Sandmeyer, *The Anti-Chinese Movement in California* (Univ. of Ill. Press 1991); Victor Low, *The Unimpressible Race* (East/West Publishing Co. 1982).

While Asian American immigrants were drawn to the United States by its promise of a better life, all too often they found only hardship and the dangerous work that nobody else wanted. Their treatment was so dismal it gave rise to the expression “a Chinaman’s Chance,” a term meaning, “Little or no chance at all; a completely hopeless prospect.” The Free Dictionary, found at <https://idioms.thefreedictionary.com/Chinaman%27s+chance> (last

visited 8/24/2026).³

Historical court cases in which Asian Americans struggled for equal treatment provide a record of discrimination that is tragic, outrageous and impossible to refute.

In 1854, in *People v. Hall*, 4 Cal. 399, 404-05 (1854), the California Supreme Court invalidated the testimony of Chinese American witnesses to a murder, explaining that Chinese were “a distinct people . . . whose mendacity is proverbial; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point, as their history has shown; differing in language, opinions, color, and physical conformation; between whom and ourselves nature has placed an impassable difference.”

In *Ho Ah Kow v. Nunan*, 12 F. Cal. 252 (C.C.D. Cal. 1879) (No. 6,546), a district court invalidated San Francisco’s infamous “Queue Ordinance” on equal protection grounds.

In *In re Ah Chong*, 2 F. 733 (C.C.D. Cal. 1880), the court found unconstitutional a law forbidding Chinese Americans from fishing in California waters.

In *In re Tiburcio Parrott*, 1 F. 481 (C.C.D. Cal. 1880), the court declared unconstitutional a provision

³ There are various explanations for the origin of this phrase. “One is that they were given the most dangerous jobs, such as setting and igniting explosives. Another is that judges and juries routinely convicted Chinese defendants on the flimsiest of evidence. A third is that Chinese miners were allowed to work gold claims only after others had taken the best ore.” *Id.*

of California's 1879 constitution that forbade corporations and municipalities from hiring Chinese Americans.

In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), the Supreme Court ruled that Chinese were "persons" under the Fourteenth Amendment and could not be singled out for unequal burden under a San Francisco laundry licensing ordinance.

In *In re Lee Sing*, 43 F. 359 (C.C.D. Cal. 1890), the court found unconstitutional the "Bingham Ordinance," which had mandated residential segregation of Chinese Americans.

In *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), the Supreme Court ruled that a Chinese American boy, born in San Francisco, could not be prevented from returning to the city after a trip abroad.

B. The Page Act and Chinese Exclusion Act.

The Page Act of 1875 was the first restrictive federal immigration law, and effectively barred the entry of Chinese women to the United States under the guise of preventing prostitution. *See Page Act of 1875*, Wikipedia, found at https://en.wikipedia.org/wiki/Page_Act_of_1875 (last visited 8/24/2026.) In 1882, in an even more extraordinary attack on equal protection, Congress passed the Chinese Exclusion Act of 1882, a law enacted to prevent an entire ethnic group from immigrating to the United States. *See*

Chinese Immigration and the Chinese Exclusion Acts, found at <https://history.state.gov/milestones/1866-1898/chinese-immigration> (last visited 8/24/2026). As aptly described by opponent Republican Senator George Frisbie Hoar, it was “nothing less than the legalization of racial discrimination.” *Id.*

It was not until 1943, when China was an ally in the war against the Empire of Japan, that the United States finally repealed the Chinese Exclusion Act. *Id.*

C. World War II Internment of Japanese American Families.

An egregious modern attack on the constitutional rights of Asian Americans occurred during World War II, when entire families of Japanese Americans were removed from their West Coast homes and placed in internment camps.⁴ Supported by the statements of authorities who declared the measure necessary to national security, the internment of Americans in concentration camps on American soil was allowed by the courts. *See Hirabayashi v. United*

⁴ Executive Order No. 9066, issued February 19, 1942, authorized the Secretary of War and military commanders “to prescribe military areas from which any persons may be excluded as protection against espionage and sabotage.” Congress enacted § 97a of Title 18 of the United States Code, making it a crime for anyone to remain in restricted zones in violation of such orders. Military commanders then issued proclamations excluding Japanese Americans from West Coast areas and sending them to internment camps. *See Korematsu*, 584 F. Supp. at 1409.

States, 320 U.S. 81 (1943). Only decades later was it acknowledged there had been no justification for this abrogation of constitutional rights. See *Korematsu v. United States*, 584 F. Supp. 1406, 1416-20 (N.D. Cal. 1984) (motivation was “racism” and “hysteria,” not “military necessity”); *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987).

D. The Disgraceful History of Discrimination Against Asian Americans in Education.

After the 1776 Revolution, Americans agreed with Thomas Jefferson “that the future of the republic depended on an educated citizenry” and that universal public education should be provided to all children. Johann N. Neem, *The Founding Fathers Made Our Schools Public. We Should Keep Them That Way*, The Washington Post (Aug. 20, 2017), found at <https://www.washingtonpost.com/news/made-by-history/wp/2017/08/20/early-america-had-school-choice-the-founders-rejected-it/> (last visited 8/24/2026). Alas, that noble sentiment did not extend to Asian American children, who were often denied access to public education.

In *Tape v. Hurley*, 66 Cal. 473, 6 P. 12 (1885), it took a court battle to force San Francisco schools to admit a Chinese American girl denied entry because, as stated by the State Superintendent of Public Instruction, public schools were not open to “Mongolian” children. *McClain, supra*, at 137. In

response to the ruling, the California legislature authorized the establishment of separate “Chinese” schools: “When such separate schools are established, Chinese or Mongolian children must not be admitted into any other schools.” See *Tape v. Hurley, Aftermath*, found at https://en.wikipedia.org/wiki/Tape_v._Hurley (last visited 8/24/2026.) Chinese American schoolchildren were restricted to those schools until well into the twentieth century. *Ho*, 147 F.3d at 864.

Asian American schoolchildren were among the first victims of the “separate-but-equal” doctrine created in *Plessy v. Ferguson*, 163 U.S. 537 (1896). The Court created the doctrine in a case where a black passenger attempted to board a “white” railway car. *Id.* In 1902, in *Wong Him v. Callahan*, 119 F. 381 (C.C.N.D. Cal. 1902), this doctrine was applied to schools when a court ruled that Chinese American children in San Francisco could be barred from “white” schools because the “Chinese” school in Chinatown was “separate but equal.”

In *Gong Lum v. Rice*, 275 U.S. 78 (1927), the Supreme Court affirmed that the separate-but-equal doctrine applied to K-12 schools, finding that a nine-year-old Chinese American girl in Mississippi could be denied entry to the local “white” school because she was a member of the “yellow” race. *Id.* at 87.

In *Ho v. San Francisco Unified Sch. Dist.*, 147 F.3d 854, a striking modern example of discrimination against Asian Americans, constituents of

Amici Curiae were forced to engage in five years of vigorous litigation to end the San Francisco school district's policy of assigning children to K-12 schools based on their race. *See id.*; *San Francisco NAACP v. San Francisco Unified. Sch. Dist.*, 59 F. Supp. 2d 1021 (N.D. Cal. 1999). This was the first instance in American history where Asian Americans challenged allegedly "benign" racial discrimination.

The *Ho* case was particularly ironic as just a few decades earlier, in *Lee v. Johnson*, 404 U.S. 1215, 1215-16 (1971), Supreme Court Justice Douglas, recognizing the long history of discrimination against Asian Americans in education, wrote: "Historically, California statutorily provided for the establishment of separate schools for children of Chinese ancestry." *Id.* "That was the classic case of *de jure* segregation involved [and found unconstitutional] in *Brown v. Board of Education* [347 U.S. 483 (1954)]. . . ." *Id.* "*Brown v. Board of Education* was not written for blacks alone. It rests on the Equal Protection Clause of the Fourteenth Amendment, one of the first beneficiaries of which were the Chinese people of San Francisco." *Id.*

Unfortunately, the same discriminatory intent is alive today, now cloaked as a striving for collective "equity" and skin-deep "diversity."

**V. THERE IS AN URGENT NEED TO
FORBID CYNICAL USE OF PROXIES
FOR RACE IF THE EROSION OF EQUAL
PROTECTION IS TO BE STOPPED.**

Following this Court’s landmark ruling in *Brown v. Board of Education*, 347 U.S. 483 (1954), local school boards attempted to evade desegregation through purportedly neutral mechanisms such as “student placement laws” and “freedom of choice” plans. *See Aftermath of Brown v. Board of Education*, Legal Information Institute, found at <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/aftermath-of-brown-v-board-of-education> (last visited 8/24/2026). Similarly, in Montgomery County, school officials achieve desired racial results using facially-neutral methods which proponents hope will evade this Court’s modern landmark decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), categorically forbidding consideration of race in student admissions. If their strategy of using disguised racial proxies succeeds, it will be emulated at countless schools across the nation.

If we are to avoid decades of additional discrimination and litigation such as was caused by the post-*Brown* efforts of segregationists who fought to deny black children equal rights, this Court must emphatically clarify, sooner rather than later, that a school’s use of race-neutral proxies will not shield a

racially-motivated admissions program from a skeptical inquiry under strict scrutiny.

CONCLUSION

Some 70 years ago, in *Brown v. Board of Education*, 347 U.S. 483, this Court recognized the inherent injury to individuals when schools treat children differently because of their race; and found that such discrimination was unlawful, whatever the stated rationale. That same reasoning should apply here today.

This Court should grant certiorari so that it can clarify that a school may not evade strict scrutiny by using proxies to racially balance enrollment.

Respectfully submitted,

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