Summer 5-9-2022

Affirmative Action in Higher Education: What Role does Whiteness Ideology Play?

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Affirmative Action in higher education seeks to increase equality of opportunities for students who belong to groups known to have been treated prejudicially against previously. Whether scholars support or oppose Affirmative Action, substantial literature on Affirmative Action has debated why this policy is perceived as biased and how these misperceptions have led to racial resentment. I think how whiteness ideology plays a role in Affirmative Action is overlooked in the conversation. In my research, I analyze how the legal privilege of whiteness permeates policymaking and perceptions of race by comparing and contrasting the Supreme Court opinions of Regents of the University of California v. Bakke and lower Court opinions of Students for Fair Admissions v. Harvard, two prominent "reverse discrimination" racially-based Affirmative Action cases. I also analyze the text of prominent news from the New York Times and Wall Street Journal on Bakke and SFFA. I find that all the resources I examine demonstrate the presence of whiteness ideology, whether explicitly or implicitly. I argue that whiteness ideology dominates discourse about higher education admissions.

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Honors Thesis: Political Science

POLS 4994W

May 9, 2022

Introduction

Systematic racism and racial conflicts are nothing new in America. But at least in its original conception, Affirmative Action is a remedial policy to address racial inequality. In this thesis, I place my research into the category racially-based Affirmative Action[1] in U.S. higher education to examine whether Affirmative Action justifies or challenges white dominance in U.S. higher education. Affirmative Action in higher education purposefully seeks to increase equality of opportunities for students who belong to groups known to have been treated prejudicially against previously. Education is vital for racial equality. First, Brown v. Board of education was the landmark U.S. Supreme Court decision to desegregate public schools, which means education is a civil right that every American could be entitled to. Second, widespread values make people believe that education could help social mobility. I assume no one would not like higher social status, at least not downward mobility.

American people are proud of egalitarian democracy. Overt racism is not going to be recognized and is politically incorrect. However, when discussing Affirmative Action in higher education, why might policymakers and the general public not support racially-based Affirmative Action in higher education as a remedy for minority students? I claim that part of the answer relates to the hidden role that whiteness plays here. Contemporary Affirmative Action debate raises questions of and arguably centers on Blackness and Asianness. Many political scientists argue that Affirmative Action reflects the problem that racial minorities still struggle with within the racial barrier in higher education. They say that white means unearned privilege that makes white status superior to nonwhite status (Harris, 1993; Katznelson, 2006; López, 2006). In this research, I would like to examine what role whiteness ideology plays in Affirmative Action controversies and its broader effect on U.S. higher education. My concern is what perceptions of Affirmative Action are, what kind of Affirmative Action rationales there are, and what kinds of ideologies dominate in U.S. higher education.

Even though Affirmative Action in higher education has been highly debated for decades, political scientists and legal scholars agree (Harris, 1993; Katznelson, 2006; López, 2006) that whiteness plays a role in Constitutional law, racial relations, and Affirmative Action. So I will review the scholarship on black/white interest convergence, white rhetoric, and Asian American struggle. There is little public discourse recognizing white privilege in American legal and social life; white privilege is invisible and silent (Moy et al., 2001). But laws and policies are usually made such that default that whites are the norm and that white people have rarely given up their privilege, nor are they willing to acknowledge their privilege (Harris, 1993; Lipsitz, 2018; López, 2006). That is to say, whiteness ideology means how people know their racial world and justify their position. Moreover, making whiteness inevitable and the natural status quo is an approach to justify white interests. To make whiteness ideology less abstract, I will briefly define whiteness ideology as protection, obviousness, and omission. In my research design, I apply the concepts of whiteness ideology to my case studies, Regents of the University of California v. Bakke and Students for Fair Admissions V. Harvard. I also study the liberal and conservative media coverage of Bakke and SFFA.

I next discussed findings and analysis from these two landmark Affirmative Action cases and media coverage. I compared and contrasted conservative and liberal Supreme Court opinions, New York Times liberal and Wall Street Journal conservative articles' unique

[1] Affirmative Action in this thesis only refers to racially-based Affirmative Action. There is no intersectional analysis in this thesis regarding Affirmative Action.

ideological features, and the ideology conveyed by the media with the Supreme Court opinions. I anticipated that rhetoric and goals in the two cases justify white dominance and interests in U.S. higher education. So while these two cases are all about reverse discrimination, the mass media probably portraysracially-based Affirmative Action as discrimination aganist whites, thus reinforcing whiteness ideology, and purposeful racializes Asian Americans. Furthermore, I propose a further question for the academic audience to consider– What kinds of new non-ideological understandings of Affirmative Action do people need for better racial integration?

Literature review

A substantial race politics literature addresses the debate over opposing or supporting Affirmative Action, which never stopped since President Johnson signed executive order 11246 in 1956. Affirmative Action is not a new executive order signed by President Johnson. After the Great Depression, a series of "affirmative" social policies such as the minimum wage, union rights, Social Security, and even the G.I. Bills were created to give enormous benefits to white people (Katznelson, 2006). New Deal and Fair Deal initiatives built the largely white middle class, but excluded African Americans . These social policies excluded maids, farmworkers, domestic and agricultural workers, and primarily southern blacks . These unequal Affirmative Action policies widened the racial wealth gap . After President Johnson signed executive order 11246 in 1956, minority mobility significantly increased . However, Katznelson (2006) argues that the Bush Administration limited the scope of diversity as an appropriate and legitimate rationale for admissions policies. The attitude toward Affirmative Action reflects the conflict ideology of the supporters and opponents of this policy. In the anti Affirmative Action position, individual rights and state interests could not be reconciled in Affirmative Action. The pro Affirmative Action argues that Affirmative Action intends to remedy minorities rather than discriminate against white people. The deeper controversy of the Affirmative Action debate is the lack of healthy racial policy in American society, so I want to explore this issue in the context of racially-based Affirmative Action. In my literature review, I first review analyses of racially-based Affirmative Action in higher education by categorizing the literature into three camps. First, interest convergence theory suggests black people are only fortuitous beneficiaries of affirmative Action because their educational interests are only protected when they converge with white elites' long-term interests (Bell, 2005). Second, Asian Americans are positioned awkwardly in Affirmative Action debates because the racialization of Asian Americans as Model Minority makes the general public believe that Asian Americans are the victims of "reverse discrimination" (Kim, 2018; S. Lee, 2006; Mangum & Block 2021; Moses et al., 2018; Wu, 1995). Third, scholars on whiteness believe the most vital element of whiteness in any political conflict—such the one over Affirmative Action—is the power to exclude nonwhites from civil rights (Harris, 1993).

Interest Convergence Theory

Critical race theory is a theory critical of the U.S. law for perpetuating systemic racism. Critical race theory claims that the liberal notion of value-neutral U.S. laws plays a crucial role in preserving a racially unequal social order, in part because technically colorblind laws have racially-discriminatory results (Ansell 2008; Crenshaw 2019). As a critical race theorist, Derrick Bell proposed Interest Convergence Theory to explain why racially-based educational reforms, including Affirmative Action, do not alleviate the problem of historically discriminated against

groups. In the Harvard Law review, Bell first proposes his theory by explaining why Brown v. Board of education school desegregation was not a celebration of racial justice (Bell, 1980). He argues that truly effective desegregation would involve whites giving up their privileges. The sudden shift from segregation to desegregation in 1954 was because white policymakers wanted to combat communist ideology by demonstrating American equality for all in the potential Third World allies (Bell, 1980). Besides, policymakers wanted to curb the anger of black soldiers returning from World War II and keep segregation from affecting the industrialization of the South (Bell, 1980). But actions that merely aim to achieve racial balance are similar to the abolition of one-race schools under such ill-motivated reforms; black children do not receive a better education but suffer racist retribution (Bell, 2005).

In his book Silent Covenant, Bell expands his initial theory to Racial Sacrifice Covenants and Interest Convergence Covenants and then applies his theory in the case of Michigan undergraduate and law school race-conscious admission (Bell, 2005). According to the Supreme Court, Michigan undergraduate policies added points to racial minorities were unconstitutional; but Michigan law school policies, which weighed factors other than race, were constitutional. Through scrutiny of how a consensus white identity during slavery the reasons behind the abolition of slavery, Bell finds out that black people are incidental or fortuitous beneficiaries only when their interests are consistent with the political demands of white elites at that time (Bell, 2005). In the Michigan Minority Admission cases, Justice O'Connor, who opposed Affirmative Action, voted with the majority because she believed that racial diversity could promote learning outcomes in higher education. O'Connor's opinion also includes that individuals should not be adversely affected by racial preference and should not harm innocent individual interests (Bell, 2005).

Some CRT scholars also doubt the incentives of a diversity rationale to improve the learning environment for college students. In some universities, the racial climate makes white students feel they are more qualified to go to higher education institutions than minority peers, and some minority students have feelings of insecurity, inferiority, and self-doubt, which lead some of them to change majors or schools (Yosso et al., 2004). So the purpose of Affirmative Action is to help whites better live in diverse communities rather than providing students of color equal opportunities (Yosso et al., 2004). Dorsey and Vanzant Chambers use Bell's theories as a framework to explore how Affirmative Action legal debates support white elites' interests (Dorsey & Venzant, 2014). They find that famous Affirmative Action-related court decisions all subtly protect pro-elite interests. For example, the Bakke decision indicted anti Affirmative Action in race-based admission because conservatives attribute white downward mobility to the benefits preferred to minorities (Dorsey & Venzant, 2014). Based on the Interest Convergence Theory, individuals and institutions benefit from Affirmative Action and diversity-related programs. It doesn't matter who the representative is in some legal cases.

Even though Bell criticized the motivations behind Affirmative Action, he did not oppose racially-based Affirmative Action. He cites Robert Carter's recognition of racism-"racial segregation was merely a symptom, not the disease" (Bell, 2005). So, racially-based Affirmative Action is not a trigger for racial tensions but rather a reflection of the deep-rooted and temporarily irreconcilable racial tensions in American society. Bell claims that "all deliberate speed" in Brown II's decision was disappointing because black people still face considerable barriers to education and employment (Bell, 2005). He believes that education and employment are the bedrock for success, but the poor quality of education that blacks receive and the difficulty in finding jobs, which causes African Americans to fall far behind economically, also

undermine black life equality in America. That is why Affirmative Action has to exist in the form of remedy, not misunderstood as benevolent giving by whites (Bell, 2005).

There are historical events or legal cases that uphold the interests of the majority of whites, and there are those that defend the interests of minorities. But the convergence of interests has led to the fundamental policy beneficiaries being always white elites. Nonwhite elites, according to this theory, are also not primary beneficiaries. Within this category of literature, a common assumption is that both individuals and institutions have interests, which may be individual or collective. It is almost undeniable that every black person wants to liberate themselves and be an equal citizen in America. But putting aside this unimpeachable interest, how do whites and minority groups know what their interests are? Lopez argues that law plays the role of coercive and ideological force in the construction and persistence of race (López, 2006). So do the court opinions and popular media coverage promulgate opinions expressing white interests? Whether the Court gives preference to the white interests when deciding a case about Affirmative Action based on interests convergence.

Whiteness plays a role in Affirmative Action

Whiteness is not just an abstract theory; it is embedded in different forms of racial policies and racial relations. If CRT scholars are correct, Affirmative Action is not a generous offer to African Americans because Affirmative Action effectively aims at the satisfaction of long-term white interests. So whiteness always exists in racial policies and perpetuates nonwhite subordination or marginalization. Whiteness functions as a kind of privilege (Lipsitz, 2018; López, 2006; Sylvia, 1999), rhetoric (Crenshaw, 1997; Nakayama & Krizek, 1995), interest (Alcoff, 2015; Bell, 2005; Bobo, 1998; Dovidio & Gaertner, 1996), and property (Harris, 1993) that white people will try to protect and defend in anywhere in American society including in Affirmative Action debate.

First, whiteness is a legally constructed identity which gives white people some privilege in U.S. society. Social identity is how people make sense of the world and position themselves in a social environment (Alcoff, 2015). Whiteness is a social identity which has empirical referent because it emerges from tractable racial biologism, legitimation, and historical events (Alcoff, 2015). Imaginary whiteness can confirm people's biases that they are of "the same kind" because whiteness could construct norms of behavior. Whiteness serves a role in shaping relatively unconscious habits and practices (Alcoff, 2015). Whiteness is a socially constructed identity, and the law plays a large part in defining it (López, 2006). Legal scholars such as Heney López claim that the subtle influence of a population on race is made by the coercive and ideological force of law (López, 2006). Laws changed people's physical appearances, connected racial identities to specific characteristics and lineage, and produced material circumstances of membership and exclusion that code as race (López, 2006). Furthermore, federal laws in housing, education, and the criminal justice system play essential roles in contemporary racism, creating stereotypes for nonwhites and perpetuating invisible white privilege. White privilege is developed from past slavery and segregation but continues to influence current struggles because wealth passes down generations, and "colorblind" laws have racially disparate effects (Lipsitz, 2018). Lipsitz compares how residential segregation, education inequality, environmental racism, and employment discrimination make African Americans in generally lower status in every aspect of social, economic, and political life.

Whereas previous laws explained what was considered white and the superior benefits that favored whites, contemporary whiteness has become a silent recognition, an unimpeachable

social factor. In the post-Civil Rights Movement era, law no longer explicitly grants White privilege. White privilege is an invisible, systematic, and silent privilege (Crenshaw, 1997; Nakayama & Krizek, 1995) that white people do not have to think about race in life (Sylvia, 1999). Due to socially constructed race hierarchies with white at the top (López 2006), white means natural condition and assumed norm (Crenshaw, 1997) that white is not considered a color. Whiteness privilege ideology denies privilege because white hegemony is taken for granted (Nakayama & Krizek, 1995).

Whether whiteness is a hidden or acknowledged privilege, this privilege could exist as a kind of property. Harris claims that slavery and colonialization were forms of white people's property and rights recognized and legitimized, which defines early social relations and white exceptions to ensure white people can use and enjoy their status as property holders. The most important aspect of whiteness as property is the absolute power to exclude nonwhites, which reinforces the purity of whiteness (Harris, 1993). Law allows white privilege, white people use privilege to legitimize power, and whiteness gives white people property rights to enjoy interests. White interests in Affirmative Action ensure white dominance in higher education. Lawrence claims that group interests are necessary for understanding the Affirmative Action debate because it shapes policy attitudes (Lawrence, 1998). While group interests are not set in stone, a white privilege for race-related groups has always existed in different forms.

In the racially-based Affirmative Action, white people set the barrier for minorities. First, some judges focus on diversity in institutions rather than real racial minority problems (Kennedy, 2015). As I discussed in the previous section, diversity has been seen as only helping white students' interest in living better in a multiracial society. Second, conservatives tend to legitimize racial inequality (Federico & Sidanius, 2002) by supporting a free-market approach. This ideology claims individual merit-based admissions is the only resolution to avoid institutions favoring blacks at the expense of Asian Americans and whites (Takagi, 1993). However, standard tests scores and legacy admit are critical academic criteria in admission. Still, racial minority groups are largely excluded from such conditions because excellent SAT scores and legacy are usually privileged in favor of whites, which means unfair prerequisites can already affect Affirmative Action (Bell, 2005). Asian Americans' outstanding academic scores are traditionally attributed to their unique culture which values personal merit. Third, Supreme Court opinions and decisions are essential, which reflect the ideologies of the nation's governing elites. In the Bakke case (discussed in the next section), the law acknowledges this white man's vested interest and his benefits according to his interest. Bakke believes that he, as a white man, was entitled to protection from Fourteenth Amendment, and he believed himself as a victim of reverse discrimination. Bakke said that he was qualified. But other schools also rejected him. Maybe he was too old for a medical application. But he ignored factors like age and believed that he was rejected because of his race. Harris claims that Bakke's allegation indicates his hegemonic white expectation (Harris, 1993).

Being white guaranteed great interest and privilege; the law served as a means of coercion and ideology to regulate racial behavior. Beginning in 1790, for a century and a half in the United States, the law defined white (López, 2006). Courts had to pass laws to determine which physical and social characteristics could be a prerequisite for being an American citizen (López, 2006). In addition, the white prerequisite to naturalization prior to 1952 was a social and legal creation that justified why someone was legally white (López, 2006). So citizenship and naturalization cases directly help define the positive and negative meanings of what it means to

be white in relation to racial differences, both of which directly give legitimacy to the meaning of racial classification (López, 2006). López writes:

> Law, then, constructs racial differences on several levels through the promulgation and enforcement of rules that determine permissible behavior. The naturalization laws governed who was and was not welcome to join the polity, antimiscegenation laws regulated sexual relations, and segregation laws told people where they could and could not live and work. Together, such laws altered the physical appearances of this country's people, attached racial identities to certain types of features and ancestry, and established material conditions of belonging and exclusion that code as race. In all of these ways, legal rules constructed race (López, 85).

Law not only constructs race but also produces the ideological assumption of social relation. People perceive their own identity through law, for instance, when they assume the law exists to protect them from racial discrimination. The race then becomes a socially constitutive ideology that people imagine and inhabit (López, 2006).

So how does whiteness interest and whiteness ideology interact together to make white supremacy more powerful and a status quo is an important question in the Affirmative Action debate. If whiteness is a kind of justification that shapes group interest and group interests also reinforces whiteness ideology, how much consensus among whites can we see around Affirmative Action?

Asian Americans join the Affirmative Action conversation and their unique plight

Since Affirmative Action is intended to increase equality of opportunities for students who belong to groups known to have been treated prejudicially, Asian American students enrollment significantly increased a lot. But they encounter racial stigmatization. Asian Americans are overrepresented in higher education relative to the share of the U.S. population (J. Lee 2021; S. Lee 2006). According to the United States Census Bureau, roughly 19.9 million Asian individuals (only East, Southeast, and South Asia) were in the United States in 2020, approximately 7.2 percent of the total population (Wikipedia). Harvard class of 2021 demographics show that 23.8% are Asian American students, and 25% of Yale 2021 freshmen identified as Asian. Other Ivy league colleges offer astonishingly similar Asian American compositions, which is a unique pattern among elite institutions. Even though demographics are not a perfect indicator of Asian American achievement, Asian Americans have relatively good academic success among minority students.

Academic success does not mean that Asian Americans disprove the need for or a justice of Affirmative Action. Scholars (Kim, 2018; J. Lee 2021; S. Lee 2006; Wu 1995; Okihiro 2014) believe that Asian Americans are stereotyped as a monolithic group, especially the model minority, or forever foreigners who do not need Affirmative Action. So Asian Americans have unique predicaments and pains in the Affirmative Action conversation (Kim, 2018; J. Lee 2021; S. Lee 2006; Wu 1995; Okihiro 2014). Alcoff contends that race in the United States is mistakenly thought to consist of only two racial groups, black and white, while others are linked with one of these categories (Alcoff, 2006). She writes:

> The black/white paradigm has disempowered various racial and ethnic groups from defining their own identity and marking their difference and specificity beyond what could be captured on this limited map. Instead of naming and describing our own identity and social circumstance, we have had descriptions foisted on us from outside (P. 16)

Alcoff believes that the black/white paradigm distorts the ability and knowledge of how minority groups understand their own racial identity and other racial groups in American society (Alcoff, 2006). The black/white binary does influence Asian American public image. First, many Asian Americans are Chinese Americans whose ancestors came to be railroad laborers, and Asian Americans were viewed as more industrious than other laborers (Wu, 1995). Then the creation of the Model Minority in the 1960s comes from describing Asian Americans as a dynamic minority group who can defeat racial inequality through individual efforts (Okihiro, 2014). The conscious stereotype of Model Minority has been perpetuated for decades (Wu, 1995). Then the inappropriate manipulation of meritocracy and race references misunderstand Asian Americans as a monolithic racial group who have no economic and employment plight (Wu, 1995). However, the American public's perception of Japanese Americans as foreign enemies during World War II and such racialization has resulted in Asians remaining an unassimilable and marginalized group in the United States (Wu, 1995; Okihiro, 2014).

After the Model Minority Myth was created, Asian American Studies scholars argue, it was used to strike against supposedly non-model minorities, like African Americans. White people use model minorities to discipline blacks (Okihiro, 2014), stigmatize blacks as inferior (Okihiro, 2014), integrate white supremacy and anti-blackness (Kim, 2018). George Lipsitz points the white power influence as:

> The power of Whiteness depended not only on white hegemony over separate racialized groups but also on manipulating racial outsiders to fight against one another, to compete for white approval, and to seek the rewards and privileges of Whiteness for themselves. Aggrieved communities of color have often sought to curry favor with whites in order to make gains at each other's expense (P. 3)

There he describes how white power causes minority conflict. In Affirmative Action, highly racialized Asians do bring racial resentment against African Americans. In a survey of support for Affirmative Action and Preferential Hiring and Promotion, Mangum and Block find that racial resentment affects all races because some people are against Affirmative Action not due to who gets benefits and who deserves benefits but due to irritation towards and stigmatization of other racial groups (Mangum & Block, 2021).

The rationalization of Model Minority creates a false image and perception that all Asian Americans are successfully overcoming racial barriers (Wu, 2005). But scholars criticized this false statement because Asian Americans are not a monolithic group (Kim, 2018; J. Lee, 2021). Asian American is not a single ethnicity because Asian Americans include different ethnic groups. They have different educational and economic backgrounds, which lead to different opinions towards Affirmative Action. Affirmative Action is used to racialize Asian Americans in a rubric of success and exclude them from Affirmative Action (Moses, Maeda, & Paguyo 2018). The Model Minority imaginary also ignores the continuous racism in American society, such as anti-Asian discrimination in the workplace, masks the fact that more members in the Asian families contribute to the family income, and attributes Asian Americans' failure to personal failure (Wu, 2005).

In the contemporary Affirmative Action controversy, Asian Americans are exploited in different political discourse which demonstrate the ideology conflicts. In a hegemonic black/white binary society, the right claims that Asian Americans are victims of Affirmative Action, and it is necessary to eliminate the role in society by only using merits in college admission (Omi & Takagi, 1996). Left political discourse faced the dilemma that they would like to pre Affirmative Action and worry about the overrepresentation of Asian American in higher

education (Omi & Takagi, 1996). In fact, Leong argues that Asian Americans get more opportunities to access higher education because of Affirmative Action (Leong, 2016). University officials use statistics of Asian American admission rate and demographic information to prove Asian American overrepresentation in higher education (Takagi, 1990). The black/white bipolar model no longer handles the complex racial conflicts in the US and how to construct and represent different racial groups (Omi & Takagi, 1996). So Conservatives strategically make use of Asian American victim images to oppose Affirmative Action which could make them sound less racists (Leong, 2016). Takagi argues that facts in the Asian American Admissions Controversy is conflict of ideologies and the interpretation of facts. These facts caused the construction of the reality of Asian American representation in higher education (Takagi, 1990).

I argue that Asian Americans are victims of Affirmative Action not because of being underrepresented in higher education but because they were stereotyped, racialized, and exploited as political tools to oppose Affirmative Action. The purposeful racialization of Asian Americans eliminated consideration of Asian American problems in a black/white binary society (J. Lee, 2021). So are Asian Americans as successful as white people and no longer need Affirmative Action? Or is this framing of the question an expression of white ideology? In addition to Affirmative Action, Jennifer Lee proposes a distinctive problem: overrepresented Asian Americans in higher education are underrepresented in workplace promotion (J. Lee, 2021). This question warrants further reflection on what is the real plight of Asian Americans. Scholars are more concerned with challenging the stereotype than explaining Asian Americans' position in Affirmative Action. The Model Minority image is created by white dominated society, but is Asian Americans' position in Affirmative Action manipulated and exploited by whiteness ideology? The side effects of Model Minority may make Asian Americans themselves exploit this supposed "model minority" identity, or maybe some Asian Americans also want to use "model minority" identity to disparage black and other "unsuccessful" Asians/minorities? Thus, I would like to study how the Court justifies Asian American position in the U.S. and how mass media portray the Affirmative Action cases related to Asian American plaintiffs.

Whiteness Ideology Definition

We don't live in a "separate but equal" society anymore, but white interests make them want to hold privileges in society. How are they legitimate power? It is wrong to categorize white people as a monolithic group, but scholars rarely deny that white interests exist for many whites. In the black and Asian American higher educational struggles, scholars either do not mention group interest, or criticism treats them as monolithic group interests. The general assumption under the whiteness scholarship is that all white people aspire to get vested interests because of their white purity race. That is to say, the silent profitability of whites is a property that all whites want to protect and will deny their privilege with whiteness rhetoric.

Whiteness is a silent privilege that helps white people legitimize power and expect unearned privilege in every aspect of social life. Privilege means people consciously or unconsciously expect certain benefits, usually due to their social position (Alcoff, 2015). In Affirmative Action, assuming the "white" students are deserving of the best is one potential thing that demonstrates whiteness. Moreover, ideology plays a vital role in what human beings believe or value and how whiteness is justified. Marxism argues that ideology justifies power (Marx). Although Marx is writing about class relations in the following paragraph, we can adapt his idea to explain racial relations in U.S. society:

> The ruling ideas are nothing more than the ideal expression of the dominant material relationships, the dominant material relationships grasped as ideas; hence of the relationships which make the one class the ruling one, therefore, the ideas of its dominance...Once the ruling ideas have been separated from the ruling individuals and, above all, from the relationships which result from a given stage of the mode of production, and in this way the conclusion has been reached that history is always under the sway of ideas, it is very easy to abstract from these various ideas "the idea," the notion, etc. as the dominant force in history, and thus to understand all these separate ideas and concepts as "forms of self-determination" on the part of the concept developing in history (Marx).

Thus, whether we are analyzing racial or class groups, the general point is that ruling groups are the biggest believers of their own ideology. Ideology is a belief that begins from top and brings into bottom. These distorted conceptions of white dominance in social policy will gradually perpetuate when history moves from an explicit bias in favor of whiteness to an implicit bias in favor of whiteness. According to Marxism ideology, Aviles argues that naturalization, historicization, and internalization are the three most important characteristics which construct ideology (Aviles). Finlayson claims that the power of interests and identities articulate cultural institutions such as educational institutions (Finlayson, 2015). Furthermore, hegemony is ultimately about "norms," the establishment of practices and ideas as "natural" or "what everyone believes" so that they become indisputable presuppositions and unquestioned frameworks of social, cultural, political, and governmental Action. People who are not among the privileged group may willingly grant their "permission" to a rule on this basis (Finlayson, 2015). In the Affirmative Action context, whiteness ideology should be laws that construct the superior role of white people and white interests in higher education.

I combine the definition of whiteness and the definition of ideology in the term whiteness ideology. I define white ideology as a social factor in American society that normally holds the superior white position. According to the literature review, I expect that the Supreme Court still justified the white dominance position in higher education. Conservative media coverage more explicitly spread the whiteness ideology. The liberal media coverage supports racial-based Affirmative Action but has no constructive guide to enriching racial minority students' experience in higher education. The remedial rationale of Affirmative Action slowly inclines to a diversity rationale, which obscures the beneficiaries of the policy. I also do not expect to find substantial articles and opinions about how to improve minority "success". Starting from these expectations, I claim three indicators of whiteness ideology in racially-based Affirmative Action would be: (1) Institutions treat white interests as the priority and protect white privilege. (2) Institutions have explicit sustainable goals or treat the meaning of certain goals as "obvious". (3) Any elusive and vague rhetoric that sounds conceivable, but no constructive guide to enriching racial minority students' experience in higher education. That is to say, I will study whether institutional interests ensure that Whiteness in higher education is "normative" or not; whether Supreme Court opinions effectively have goals and rhetoric to keep racial inequality in higher education admission; and whether the diversity rationale considers how to help racial minorities succeed in college and further their careers and lives. In summary, signs of whiteness ideology in my source material are protection, obviousness, and omission.

Summary of the literature

In the literature discussion, different minority racial groups are experiencing and combating social construction stereotypes and stigma. White racial conservatives now try to use reverse discrimination to oppose racially-based Affirmative Action and also attempt to bring Asians into the fold. The overlap in the literature is the whiteness ideology. Scholars have used the way whites have historically treated minorities, portrayed their image in society, and Affirmative Action legal cases as evidence of protecting white property. White identity is entitled to innate privilege, wealth, and legal preference. Although many scholars in this well-established field have studied the rationale given by institutions and the race factor in social policy, I would like to examine whether the rhetoric and goals of SFFA v. Harvard and Regents of the University of California v. Bakke justified or challenged white dominance in U.S. higher education. To be specific, if whiteness ideology does still dominate higher education admission now, does it dominate in a more subtle approach? Furthermore, since whiteness is a social, psychological, and legal identity, investing in the white property must not be something only whites can do. So it is worth exploring how nonwhite perceptions of Affirmative Action and their attitudes and perceptions of group interest/personal interest have protected white property. I will also use media coverage to pull journals around the time of cases to explore whether mass media spread whiteness ideology too. Whether the media coverage of Affirmative Action influenced the Court opinion or the Court opinion influenced the media coverage of Affirmative Action or not, mass media is an essential medium of dominant ideas conveyed to the general public. From the media coverage, I can examine both white and nonwhite perceptions of Affirmative Action to see prevalent in society.

Regents of the University of California V. Bakke Court and News Articles Analysis

In the Bakke case, 16 of 100 seats in UC Davis medical school were only open to racial and ethnic minorities (no disadvantaged white students were admitted in the particular program). Special candidates in the special admission programs did not have to meet the 2.5-grade point average requirement and were not ranked against candidates in the general admissions process. A white male Allan Bakke applied to medical school in 1973 and 1974, but he was not on the waiting list and was rejected. But specially admitted students scored significantly lower than Bakke. Bakke alleged UC Davis' special program excluded him because of his race, which violated the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court affirmed the lower court decision that the racial quota in UC Davis medical school was unconstitutional. I organized and analyzed the Court's rhetoric and goals and then categorized this rhetoric into the whiteness ideology indicators. The goal of the analysis was to find whether the rhetoric and goal of the Bakke decision justify white dominance in US higher education.

I first discuss the majority opinion, and I find arguments and rhetoric that fit into three whiteness ideology indicators- (1)Institutions treat white interests as the priority and protect white privilege. (2) Institutions have explicit sustainable goals or treat the meaning of certain goals as "obvious." (3) Any elusive and vague rhetoric that sounds conceivable, but no constructive guide to enriching racial minority students' experience in higher education. I will first revisit the syllabus and then-Majority opinion, Dissent opinions, and other concurring opinions. Then I will discuss why these arguments fit into each indicator or not and other findings that may relate to whiteness.

In this case, Mr. Justice Powell announced the judgment of the Court, Mr. Justice Stewart, Mr. Justice Rehnquist, and Mr. Justice Stevens concur with this judgment. MR. Powell concluded:

> 1. Title VI[2] proscribes only those racial classifications that would violate the Equal Protection Clause if employed by a State or its agencies. Pp. 281-287. 2. Racial and ethnic classifications of any sort are inherently suspect and call for the most exacting judicial scrutiny. While the goal of achieving a diverse student body is sufficiently compelling to justify consideration of race in admissions decisions under some circumstances, petitioner's special admissions program, which forecloses consideration to persons like respondents, is unnecessary to the achievement of this compelling goal and therefore invalid under the Equal Protection Clause. Pp. 287-320. 3. Since petitioner 6could not satisfy its burden of proving that respondent would not have been admitted even if there had been no special admissions program, he must be admitted. P. 320. (Regents of the University of California v. Bakke, 1978)

Justice Powell argues that UC Davis medical school admission violates the Equal Protection Clause because a special program for racial minorities students is not the only way to achieve the compelling state interest, diversity. In addition, UC Davis could not prove that Bakke could not be admitted even without Affirmative Action. In conclusion, Justice Powell argues that rather than a State or its agencies, UC Davis could consider race as a factor in the admission process. However, race can only be a factor to justify diversity and no special programs could benefit students based on race.

As I discussed in previous sections, contemporary white privilege is not an explicit ideology but white privilege hasn't been eradicated. In the discussion of preference, Justice Powell argued that individuals should not be held accountable for group-based outcomes and group-based preference will cause stereotypes. Higher education admission processes are all about preference. Preference does not mean the specific preferencial standard; it is a selective process. Justice Powell believed that admitting more lower grade minority students would shrink the opportunities of white students and advance minorities. Even if Affirmative Action is preferential policy, its purpose is to treat minorities as deserving citizens rather than enhancing minority success unfairly. I argue that preferential programs reinforce stereotypes that minorities get into higher education because of Affirmative Action preference rather than personal merits. Past discrimination, segregation, and economic plight make minorities not have the same resources that whites have to compete in higher education. On the other hand, legacy is the Affirmative Action for white students that validates the burden on lower socioeconomic students and advanced elites' kids; but is it legal and still legal without judicial scrutiny. As long as institutions use legacy and other factors traditionally prefer white people, they justify protecting white property. Justice Powell also writes: "Also, the remedial action usually remains subject to continuing oversight to assure that it will work the least harm possible to other innocent persons competing for the benefit" (Regents of the University of California v. Bakke, 1978). The antithesis of white innocence is not that white people are guilty. Innocent here means that whites think they are innocent. Moore and Bell explain the assumptions behind "white innocence": "Racing for innocence manifests itself in two central ways. First, there exists an underlying assumption in the dominant discursive frame that contemporary white people have no responsibility for the history of explicit, legal, and government enforced racial oppression. Second, the frame enforces (often tacitly, sometimes explicitly) that the only whites who hold any responsibility for racism are those actively engaged in expressions of racial animosity" (Bell

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[2] Title VI: § 601 of Title VI of the Civil Rights Act of 1964, which provides, inter alia, that no person shall on the ground of race or color be excluded from participating in any program receiving federal financial assistance.

& Moore, 2011). The prerequisite of helping minorities should not threaten white interests. Furthermore, According to the Court, “An applicant of whatever race who has demonstrated his concern for disadvantaged minorities in the past and who declares that practice in such a community is his primary professional goal would be more likely to contribute to alleviation of the medical shortage than one who is chosen entirely on the basis of race and disadvantage. In short, there is no empirical data to demonstrate that any one race is more selflessly socially oriented or by contrast that another is more selfishly acquisitive.” (Regents of the University of California v. Bakke, 1978). So the Court believes that applicants' race could not be a reliable factor that alleviates the medical shortage. Any student could declare having interests in helping minority patients. It is impossible for a medical school to punish a student who has the will to do so but fails to do so, such as by revoking eligibility for graduation. Technically, medical school could admit all white students who are willing to help minority communities. We must not assume that only minority physicians can serve minority patients better. But according to these arguments, medical schools could admit all white students.

Even when Affirmative Action is still a benevolent distribution, institutions will still prioritize white interests and protect white privilege because the Court portrays some white as innocent “minorities” to deny privilege. Even this opinion hides white privilege, the second whiteness ideology indicator related to white privilege. The court “obviously” supports racial equality and has a “sustainable” goal to promote minority education. Bakke alleged that a racial and ethnic quota operated to exclude him from the school on the basis of his race. Bakke alleged “reverse discrimination”, but the court did not use the phrase “reverse discrimination”. The white majority is normal and always in the majority position in regular admission; it’s obvious. But the court did not call the allegation “reverse discrimination” because they hide the white majority positions in UC Davis medical school. From the majority opinion, setting aside programs or numbers is racial quota, which emphasizes inequality to play the race card to admit unqualified (lower than 2.5 GPA in this case, special program students score significantly lower than regular students) minority students. Without a thorough investigation into the reasons for the low enrollment scores of minority students in special programs and their academic performance upon entry into medical school, it means that Affirmative Action racial quotas arbituality favor minorities and disadvantage white majority. In addition, Justice Powell analyzed the Equal Protection Clause of the Fifth Amendment. Constitutional Law defends racial equality, and it is unimpeachable. So agencies receiving federal funds should not discriminate/favor individuals based on individual race and ethnicity. According to the Court, Affirmative Action programs, like any race-based policies, need strict scrutiny. In this case, as long as white applicants are excluded from special programs which explicitly favor minorities, it discriminates against white. These are very straightforward and obvious. However, Justice Powell argues that America is a nation of minorities (Regents of the University of California v. Bakke, 1978). White people are not a monolithic racial group. The Courts justify some white people as disadvantaged and discriminated against in American history. The logic here is that all Americans are minorities; there is no majority in the U.S. If Americans are all minorities, why was Affirmative Action created to help minorities being discriminated against in the past? In this logic and the absent explanation of the disadvantaged, each individual could be discriminated against based on racial identity. So why can some white people be innocent white? Should white students also be considered for admission for any past discrimination they may have suffered as whites? This is obviously impossible. The Court defines “non-discrimination” as race or ethinicity neither harming or helping individuals in admission. White people claims of "reverse discrimination"

might make sense if we are just talking about "individuals." But that is a color-blind perspective that assumes that laws can be race-neutral to begin with, and hence any departure from that race-neutrality is "discrimination." Race-neutrality is an objection to the remedial purpose of Affirmative Action, and by this definition, Affirmative Action means discrimination. According to Moore and Bell, innocent white means the construction of a legal identity that white is "who is not to be harmed by policies of racial reform under any circumstances' ' (Bell & Moore, 2011). Then the development of "reverse discrimination" claim in courts limit the scope of Affirmative Action (Bell & Moore, 2011). So innocent white still dominate the racial equality discourse and restrict more remedial policy (Bell & Moore, 2011). The first indicator does not exist here. There is no explicit or implicit rhetoric to treat white as privileged people, but to portray some white as innocent minorities to deny privilege.

Furthermore, Justice Powell used another famous case *Lau* to explain what kinds of preferences are permissible. He writes: "Moreover, there are serious problems of justice connected with the idea of preference itself. First, it may not always be clear that a so-called preference is in fact benign" (Regents of the University of California v. Bakke, 1978). I argue that Davis' special program preference is benign to help minority success. Many minorities get into highly selective college programs and may achieve success in the future. If the Court assumes that some minority students could not achieve success or do well in special programs, it's the stigmatization of "undeserved"/Unqualified minority. In the Lau case, "Anyone should have access to a meaningful opportunity to participate in the educational program". The UC Davis Medical school special program denied whites students opportunities" (Regents of the University of California v. Bakke, 1978). Does that mean UC Davis does not have a history of discrimination, so there is no need to remedy it? But they must have history of discrimination that hinder minority admission followed Jim Crow Law. Most black medical professionals graduate from Howard and Meharry because substantial efforts to admit minority students did not begin until 1968; and UC Davis medical school was not an exception. That is to say, they used to admit zero or a few minorities are because of the discriminatory laws. Even UC Davis did not mean to do that; minorities were excluded from meaningful learning. Obviously, it is not equal to compensating one race at the expense of another. But the problem here is that white students are still overwhelmingly dominant in the medical school program. If all races could compete for 16 special program seats, minority students' opportunities would be greatly reduced because of their relatively low scores. Thus, minority students' mobility will be curtailed again. In the comparison, the Supreme Court acknowledged that "no equality of treatment merely by providing students with the same facilities", which means minorities could not get equal education after desegregation. The opinion "meaningful opportunity to participate in the educational program" applies to anyone is obviously correct. The most important question that keeps being overlooked here is how courts reconcile minority students to achieve equal meaningful education and no white students' interests being threatened at the same time. There are many reasons that lower scores can occur, but the use of underserved will strengthen rather than alleviate stereotypes.

Justice Powell also provided guidelines for diversity rationale in higher education to increase minority enrollment in higher education, but he did not provide a constructive guide to enriching racial minority students' experience in higher education. He made the first landmark guidance on diversity in admissions: "In practice, this new definition of diversity has meant that race has been a factor in some admission decisions. When the Committee on Admissions reviews the large middle group of applicants who are 'admissible' and deemed capable of doing good

work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases. who are not only 'admissible' academically but have other strong qualities, Combined qualifications an admissions program operated in this way is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration" (Regents of the University of California v. Bakke, 1978). He also provides this guidance for admission processes: "When the Committee on Admissions reviews the large middle group of applicants who are 'admissible' and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases"(Regents of the University of California v. Bakke, 1978). Which kinds of minorities will be "admissible"? I assume that "admissible" means minorities must overcome barriers first and achieve the lowest admissible grade point average, and then Affirmative Action will take account of the race to benefit them. But even if this is the truth, the Affirmative Action purpose was still distorted. Derrick Bell argues diversity is a distraction to critique why diversity is far from ensuring the original aims of Affirmative Action (Bell, 2003). First, diversity rationales shift the remediation for past discrimination to diversity (Bell, 2003). The Court minimized the importance of race because it believes that other factors besides race can be helpful in admission, and the court ignores the facts that how past discriminations influence the current disadvantaged (Bell, 2003). The court assumes that black people can achieve success through their own merits, and GPA and standardized test scores are accurate measures of merit, instead of accurate measures of family wealth, cultural background, and other social factors (Bell, 2003). But the merits metrics such as SAT/LSAT increase with family incomes and poor indicators to predict future success (Bell, 2005).

Going off the first and second indicators, I cannot see the goals and guidelines of enriching minorities' experiences in higher education. "Minorities who can get benefits from their races only when they meet the 'admissible' requirements. Admissible in this case means the 2.5-grade point cutoff. The combined qualification, in this case, means overall grade point average, science courses grade point average, Medical College Admissions Test (MCAT) scores, letters of recommendation, extracurricular activities, and other biographical data, all of which resulted in a total "benchmark score." (Regents of the University of California v. Bakke, 1978). As discussed before, the court presupposes that minority students could overcome predicaments to achieve the "admissible" benchmark; or "admissible requirements" are fair indicators to evaluate applicants' merits from all racial and ethnic backgrounds. Going off the first and second indicators, I cannot see the goals and guidelines of enriching minorities' experiences in higher education. "Minorities who can get benefits from their races only when they meet the 'admissible' requirements. Admissible in this case means the 2.5-grade point cutoff. The combined qualification, in this case, means overall grade point average, science courses grade point average, Medical College Admissions Test (MCAT) scores, letters of recommendation, extracurricular activities, and other biographical data, all of which resulted in a total "benchmark score." (1). As discussed before, the court presupposes that minority students could overcome predicaments to achieve the "admissible" benchmark; or "admissible requirements" are fair indicators to evaluate applicants' merits from all racial and ethnic backgrounds. But if such metrics are not measuring what they claim to measure, admissible requirements will effectively be an attempt to prevent students from entering medical school. This means that this requirement creates a barrier for people with no privilege. The Court ignores family wealth, they ignore

family wealth, cultural background, and other social factors. However, the court did not consider the huge economic and social gaps between black people and white people. When the majority arbitrarily believe that racial minorities could overcome barriers, they support colorblindness. When the Affirmative Action policies' purpose shifted from remedy to diversity, minority students' benefits and resources could not threaten white students' interests. The syllabus talks about scores and personal merits, which ignore the past discrimination effects on the current minority merits. In addition, the majority opinion supports colorblindness and diversity. But how do institutions increase diversity without seeing the color? It is impossible, unless you simply ignore US racial history, and hence there is conflict. At the end, Justice Powell wrote: “In short, an admissions program operated in this way is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration”(Regents of the University of California v. Bakke, 1978). “Flexible enough” sounds like Powell’s way of giving educators and institutions academic freedom, but he offers no constructive guide on using “diversity” and avoiding the misuse of diversity. When all pertinent diversity could be considered, the race factor will be attenuated.

There is a lot of ambiguity and uncertainty in the majority opinion. The discussion on the judicial intervention on academic freedom and the private cause of action under Title VI should be well developed. Furthermore, institutions offering remedies to minorities must reduce the white majority position. Justice Powell proposed a creative diversity rationale, but he did not limit the scope to use diversity, and the conditions of flexibility of diversity. I think this is a dangerous signal here because the discussion of remedial measures will be skewed toward arguments about diversity, reverse discrimination, and colorblind. Then people gradually forget the original purpose of Affirmative Action-increasing equality of opportunities for students who belong to groups known to have been treated prejudicially against previously. These ideological controversies seem unresolvable, and different institutions must be confused about their legal duties .In the next section, I will discuss dissent opinions and the rest of the opinions to see whether their ideology justifies whiteness in relation to Affirmative Action. Since dissent opinion supported Davis admission program, I will explore how they justify the flexibility of race factors. Since they also support racial equality in higher education, I will mainly focus on how they attempt to enrich racial minority students' experience in higher education.

Different Opinions in Bakke

In this case, Justices Brennan, White, Marshall, and Blackmun joined the dissenting opinion. Justice White, Blackmun, Marshall, and Steve J supplemented their opinions. Compared to the majority opinion, the dissenting opinion was more liberal than the majority opinion. But there are still unreconciled dilemmas and unaddressed issues in the Affirmative Action debates. The dissenting opinion affirmed the necessity of Affirmative Action, but they did not provide a clearly legal explanation of colorblindness.

In dissenting opinions, the most crucial point is that remedy policy should be constitutional, and no Court decision adopts colorblindness. Nondiscriminatory treatment is not equal to colorblind. Since colorblind is not an option for constitutional interpretation, I would like to call the majority opinion on color blindness "selective color blindness". That is to say, institutions or individuals have discretionary power to see race or not. When institutions neglect past discrimination, they will say that colorblindness does not discriminate against anyone because colorblindness neither favors or disfavors minorities or majorities.

When white people (like Bakke) were not admitted to the program, they could claim their race was used against them. But when talking about remedial Affirmative Action, they also believe a constitutional admissions program should not “see” their race. But this plaintiff neglected the legislative history that black people used to be excluded from federal funding programs. The dissenting opinion argues the contradiction in the congressional intent, it says: “The conclusion to be drawn from the foregoing is clear. Congress recognized that Negroes, in some cases with congressional acquiescence, were being discriminated against in the administration of programs and denied the full benefits of activities receiving federal financial support”. "It is inconivable that Congress intended to encourage voluntary efforts to eliminate the evil of racial discrimination while at the same time forbidding the voluntary use of race-conscious remedies to cure acknowledged or obvious statutory violations" (Regents of the University of California v. Bakke, 1978). That is to say, even if Davis medical school did not intentionally discriminate against minorities in the past, minorities are less accessible to medical school in the past. As an institution receives federal funding, they should adopt a voluntary remedy. So the racial quota, in this case, was for adequate remedial services rather than arbitrary use of racial preference. Bakke argues that racial classification is not compelling and objective. He also suspects the purposes of the programs (as not benign or discriminatory against white). The dissent had different ideas on the term strict scrutiny. Dissent supports less strict scrutiny. Dissent supports any means to achieve the “remedy” end, which means programs that achieve the remedial purposes and governmental objectives should be valid. The medical school program did not discriminate against white students and treat whites as inferior. So without hatred in the program, it should be valid. Race is an immutable characteristic that causes inferiority forever, so remedial policies could eradicate past discrimination and paternalistic stereotyping. In the majority opinion, the means to justify race-conscious programs must satisfy the ends-compelling state interest. And race factors must be narrowly tailored and under strict scrutiny, stricter than gender, age, etc. But the Dissent believes that rigorous theory will still be fatal in fact without addressing discrimination. So the majority and Dissent have different opinions on the strict level of scrutiny races as a factor in Affirmative Action.

Furthermore, the dissenting opinion clearly explained why using race-conscious remedial Affirmative Action is constitutional. According to the 14th Amendment and Civil Rights Act, the Court could not foreclose institutions from addressing racial inequality. States have the discretion to use race-conscious programs voluntarily. So the Dissent believes that federal courts should be less involved in scrutinizing such state-level programs. legal conduct should be involved in institutional programs less. Voluntary means should be the first step to achieving racial equality rather than judicial intervention. So the dissenting opinions favor the discretionary power of institutions rather than very exacting standards. So a dissent emphasis on voluntary efforts sounds like "deliberate speed". The Brown v. Board of education ruled that the legal segregation system was unconstitutional. However, the Court simply required the states to remove segregation with all “deliberate speed." Because of the ambiguity surrounding how the judgment would be enforced, segregationists were able to organize resistance and lots of schools did not end segregation in a short time. Thus, “voluntary efforts” is not a good measure. On the other hand, neither diversity nor Affirmative Action are coercive forces used so that institutions can retain predominantly white student bodies. This program provides the same instruction (non-segregation) for every student. In addition, student proportion based on race corresponds with the state population demographic. If white people do not give up their privilege in higher education, there will not be effective remedial policies. Racial preference on minorities will not

treat white students as an inferior race. White is never disadvantaged, and they still dominate all social relations. But even some minorities get into higher education institutions because of Affirmative Action, white power still dominates. So Bakke's argument on race demonstrated his desire to be admitted as a white. He believed that he had higher scores than students from special programs, so he must be admitted. Otherwise, the medical school discriminates against him. However, he ignored past discrimination and other social factors than race. The dissents also claim that Bakke will not be primarily affected by the rejection, but segregation affects minorities and their future. Even if UC Davis rejected Bakke, his life would not be significantly changed or miserable because he was a white male in a white-dominated country. However, minorities had to overcome discrimination to get into college. Past legal discrimination against minorities causes the contemporary stereotypes and negative attitudes toward non-white races. If minorities are significantly underrepresented, not only do individuals find it hard to be professionals, but also the whole community lacks physicians. Even if minorities get into the program with preferences on race, their performance will be evaluated the same as other students. There are no special grading procedures for racial minorities. So these minorities will not be less qualified physicians in the future. White people outnumber minorities and have better socioeconomic backgrounds than minorities. If race is not the least intrusive factor, no other factors could be weighted to compensate minorities. UC Davis medical school did not arbitrarily use race and assign all minorities to apply for special programs. They consider other factors such as economic status to identify whether individual minority applicants are disadvantaged or not. The admission process is never an objective procedure; not everyone with the same grade or extracurricular activities can be admitted. So the Dissent believes that as long as race is thoroughly considered with other disadvantaged factors, it could be constitutional.

In the previous paragraphs, the dissenting opinion supports institutions to voluntarily adopt remedial policies to reduce judicial intervention. The dissenting opinion does not meet the first two whiteness ideology indicators because it does not feel either that the interests of whites are prioritization or that the sustainable interests of the institution are to protect white dominance. Although dissenting opinions sound obviously progressive with its talk of racial equality, the guideline to impose racial minority success is lacking. Institutions that accept federal funding have certain discretionary powers to use race as a factor to help minorities. That is to say, institutions could set their standards/programs for minorities as long as it's a remedial policy. The Dissent did not consider the percentage of the minority who could join these constitutions and the weight of race in the program's admission/recruitments. So here are some unaddressed questions:

1. If the remedial policy only remedies many higher socioeconomic background minority minorities, the policy will not help more disadvantaged minorities. If remedial measures only helped some privileged minorities instead of building a larger middle class minority through education, then white domination would still exist. This implies that minorities are being handed an equal opportunity, yet equal opportunity does not always exist.
2. Even if the number of minorities may be significant, how about the percentage of the minorities in these programs? For example, if 1000 minorities are admitted into a program, the rate only increases from 2% to 4%. So the question here is, even if institutions offer Affirmative Action for minorities, how do they justify the numbers of minorities in special programs and the general minority enrollment increase. So we do not know who regulates the numbers of minority enrollment.

3. Another unaddressed problem is the allocation of a remedial program to different racial minority groups. If 10% is given to minorities, there must be competitions between minorities. This is perhap not a problem, in this case at this time, but it will happen in the future and influence racial relations. For example, Asian Americans may claim that Affirmative Action for Blacks is against their interest. Or there are many who believe that Asian Americans have done so well that they do not need Affirmative Action. It is unproductive to argue that African Americans suffer from more segregation than Asian Americans, so they deserve more seats. When past discrimination effects on individuals cannot be measured, institutions's racial balance must be a tough task.

These unaddressed potential questions of enriching racial minority students' experience is not the constitutional legal question, but the lacking explanation of "discrimininationn", "colorblind", and "diversity" may cause further confusion. It is highly likely that minority students' admission rates are stagnant or not growing with the population. It is also expected that the prerequisite of Affirmative Action as a zero-sum game is that whites still predominate in higher education so as to make benevolent offerings to minorities. Thus, these unresolved issues not mentioned by the Court are very likely to continue to defend whiteness ideology. Actually, in the Fisher v University of Texas, Grutter v Bollinger, Gratz v Bollinger, and SFFA v Harvard, all of the unresolved issues have further intensified racial tensions rather than settle the debate.

In the eloquence of the dissenting opinion, we can see the determination to compensate minorities. But these conceivable goals can still make white dominance in practice and incur opinion backlash. The dissenting opinions referred to some cases which were assigned a fixed number of black students and white students: Swann v. Charlotte-Mecklenburg Board of Education, 402 U. S. 1 (1971), and its companion cases, Davis v. School Comm'rs of Mobile County, 402 U. S.33 (1971); McDaniel v. Barresi, 402 U. S. 39 (1971); and North Carolina Board of Education v. Swann, 402 U. S. 43. These cases justify using race as a factor to further racial pluralism in schools by using racial quotas. Minorities can still significantly lag behind the majority even with remedial policy. And black students may just be an embellishment to look racially balanced. Furthermore, dissenting opinions argue the admission outcome affects individuals. Moreover, "There is absolutely no basis for concluding that Bakke's rejection as a result of Davis' use of racial preference will affect him throughout his life in the same way as the segregation of the Negro schoolchildren in Brown I would have affected them. Unlike discrimination against racial minorities, the use of racial preferences for remedial purposes does not inflict a pervasive injury upon individual whites in the sense that wherever they go or whatever they do there is a significant likelihood that they will be treated as second-class citizens because of their color". This sounds conceivable and attempts to eradicate education inequality. Even though Bakke's peer black applicants likely suffer from school segregation, the Supreme Court assumes that the effects of Bakke's rejection was less severe than segregation of the Negro schoolchildren. No attempt is made to demonstrate that white individuals will not suffer significant harms to their career or economic prospects. The dissenting opinion assumed that since whites won't have anything significant to lose, institutions need to compensate minorities to the greatest extent possible. While it is true that whites need to give up their long standing privileges in education, such rhetoric brings with it the understanding that white individuals have to sacrifice their opportunities to compensate for other minority groups. Many white people already think that they are innocent on the issue of race. Second, it is understandable that individuals cannot accept that institutions make them give up their privileges, the unconscious privilege. So I have reason to suspect that the dissenting opinion actually plays a

counterproductive role. Trying to help minorities with more remedial policies must make whites feel tremendously threatened. Such a rhetoric is bound to lead to some opinion backlash, with white plaintiffs like Bakke suing for “reverse discrimination”. There will be more and more appeals of white claims of “reverse discrimination” because individuals cannot accept that their opportunities are being taken away and therefore white privilege cannot be eliminated. The increasing number of “reverse discrimination” cases bring to the Supreme Court will cause endless debates about Affirmative Action. Thus, the dissenting opinion was confusing.

Concurring opinions in Bakke

In this section, I would like to examine concurring opinions in this case. I found concurring opinions did not address any confusions and legal definition of diversity and discrimination. According to Justice White, "If in fact no private cause of action exists, this Court and the lower courts as well are without jurisdiction to consider respondent's Title VI claim. As I see it, if we are not obliged to do so, it is at least advisable to address this threshold jurisdictional issue. See United States v. Griffin, 303 U. S. 226, 229 (1938).' Furthermore, just as it is inappropriate to address constitutional issues without determining whether statutory grounds urged before us are dispositive, it is at least questionable practice to adjudicate a novel and difficult statutory issue without first considering whether we have jurisdiction to decide it. Consequently, I address the question of whether respondents may bring suit under Title VI". So he proposed a new perspective, another Justices just assumed a private cause of action existed.

Justice Marshall first reviewed the history of legal discrimination against African Americans. Black people being victims of the country should not be questioned. Remedial policies based on race are a prerequisite for blacks to be equal citizens rather than constitutional preferences for black people. Both the Dissent and the majority believe that the compelling state interest is to create racial equality in higher education. But they disagreed on the means to achieve the end. The majority argues that is only a factor to contribute to diversity. But Justice Marshall argues that courts should give institutions maximum freedom to compensate for past discrimination. He supports less strict scrutiny to achieve the end of remedying policy.

Justice Blackmun's stance regarding race is that race is always a factor in admission; nobody can ignore race in society. Even without Affirmative Action, institutions consider race in admission. Ignoring race is racism. Higher education institutions are selective; not every qualified student could be admitted. The admission process is all about preferences. The denial of qualified applicants is normal. Someone who had better academic scores than Bakke was rejected, or someone who had lower scores than Bakke was admitted in a regular program. However, Bakke believed that the unique program discriminated against him because of his race. If race consciousness disturbed some people, why is class consciousness still constitutional, even today? So it is not hard to find out that a part of higher education positions secure elite power and make sure wealth, including education, could pass down generations. When higher education institutions give a large portion of admission seats to legacy, they tacitly acknowledge the legitimacy of the heritage and achieve the goals of elite education. Since past laws legally discriminate against minorities, most wealth and power are white-owned. Thus, when privileged students received admission and nobody in this case questioned or even mentioned the legitimacy of legacy admission, white prioritization in higher education is treated as self-evident.

Justice Blackmun was also concerned about reconciling "exacting judicial scrutiny" and "academic freedom." He writes:" I, of course, accept the propositions that (a) Fourteenth Amendment rights are personal; (b) racial and ethnic distinctions where they are stereotypes are

inherently suspect and call for exacting judicial scrutiny; (c) academic freedom is a special concern of the First Amendment" (Regents of the University of California v. Bakke, 1978). Other Justices did not mention academic freedom and the First Amendment. However, it is predictable that an increasing number of schools may adopt more conservative and prudent racial policies to avoid ambiguity. However, it is predictable that an increasing number of schools may adopt more conservative racial policies or even abandon Affirmative Action to avoid ambiguity.

Justice Steve J. was the final Justice to publish his opinion. He concurred with Justice Powell's opinion. He argues that the private cause of action exists here, and there is no discrimination against under Fourteenth Amendment. He writes: "No doubt, when this legislation was being debated, Congress was not directly concerned with the legality of 'reverse discrimination' or 'affirmative action' programs. Its attention was focused on the problem at hand, the "glaring… discrimination against Negroes which exists throughout our Nation," and, concerning Title VI, the federal funding of segregated facilities" (Regents of the University of California v. Bakke, 1978). However, the genesis of the legislation did not limit the breadth of the solution adopted". So how does the Court address further potential questions regarding race? Even without legal segregation, African Americans could still not become equal citizens. So how to limit the breadth of the solution does not exist here. Other limitations to handle future problems regarding minority admission rates do not exist here either. The Court's purpose in leaving the solution of addressing minority representation in higher education to the institution was to make the institution's admissions policies more conservative to avoid litigation. The recognition that "reverse discrimination" receives will set back the efforts of the civil rights era, and then whites will continue to dominate everything in higher education.

In general, dissenting opinions have sustainable goals of promoting remedial policies for minority applicants. First of all, dissenting opinions and their concurring opinions all believe the necessities to remedy past discrimination by race-conscious Affirmative Action. They provide sufficient reasoning to justify the constitutionality of remedial rationale. However, the dissenting opinion leave the tasks of addressing minority learning environments in higher education without explicitly addressing the meaning of "discrimination", "diversity", and "disadvantage". Instead, they ask higher education institutions to exercise academic discretion and voluntary remedial policy. Even though academic freedom is essential in the First Amendment, the Supreme Court should give race-conscious policy guidelines to avoid the contentious problem. And colleges have legal duties on the admission process. As I discussed before, if institutions only admit higher socioeconomic minorities or remain the percentage of minority students in a critical mass, white students will still be in a prioritized position. Furthermore, these opinions have divergent views on the meaning of academic freedom, the extent of "exacting judicial scrutiny," and private cause of action. Furthermore, if the dissenting opinion had the intention to incur more litigation and then universities adopt more conservative policies, it is an implicit way to protect white dominance in higher education.

I want to use "progressive," "conservative," and "confusing" to summarize majority and dissenting opinions. Race can still be used legally under conditions that satisfy diversity. Civil Rights era efforts have not been abandoned. But the meaning of "discrimination" has been narrowed, and race needs the most exacting strict scrutiny. Both opinions did not address these arguments clearly: empirical findings on diversity rationale advantages, the legitimacy of colorblindness, the meanings of "reverse discrimination," academic freedom, and private cause of action. Higher education has legal duties to admit qualified students rather than give certain race privileges. They also have a social responsibility to construct more inclusive and diverse

campuses. But how to use the least intrusive means to achieve more minority students' success in higher education and remain the privileged white majority could not be reconciled. There is no once for all approach regarding racially-based Affirmative Action. But the Supreme Court must be aware of the actual problem of helping minorities succeed in higher education. Otherwise, whiteness ideology will continuously dominate US racial relations. The confusing Bakke opinion is not enough to deal with how to select freshmen classes when more and more students go to colleges.

New York Times articles pertaining to Bakke

This section will examine New York Times writers' opinions towards the Bakke decision and Affirmative Action. I will discuss how these authors convey their understanding of racially-based Affirmative Action after the Bakke decision and their understanding of US racial relations. I choose the liberal New York Times because it has the second or third year's largest circulation in the country depending upon the year. And based on the reputation, the New York Times has won the most Pulitzers. On the New York Times website, I use "Bakke Affirmative Action" as a keyword to filter all the articles since the case went before the Supreme Court, especially opinions and some opinions disguised as facts. Opinions could help me find out how the media rhetorically convey their ideas to the general public. There are 57 opinions from the website. But I do not account for articles 7, 12, 19, 36, 39, 44, 45, 46, and 53 [3]because these contents do not fit into the thesis topic. For example, article 7 *Saving Bork From Both Friends and Enemies* talked about the writer's assessment on Judge Bork's published articles and opinions.This article only mentioned Justice Bork's severe criticism of Powell's concerning opinion in Bakke. So I will not consider articles that only mention "Bakke", but have nothing to do with this case. Due to the limitations of this thesis, I will not analyze every article. For the articles I do analyze, I will focus on the author's stance and whether their ideology or explanation of race relates to my whiteness ideology indicators. In the first category[4] I found that articles 1,

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[3]Position 7: Saving Bork from Both Friends and Enemies
Position 12: Abroad at Home The Blackmun Legacy
Position 19: Civil Rights Groups Misjudged Piscataway Case
Position 36: A relationship that Past Its Prime
Position 39: Observer Cheering March Constitutional Progress For Long It Lasts
Position 44: Justice Stevens
Position 45: One man, Two Courts
Position 46: The Changing Face of the Court
Position 53: Diversity Tech Women Silicon Valley

[4]Position 1: The Editorial Notebook; Morris Abram, LBJ and Neutrality
Position 3:The Palpable Bias in Quotas Position 6: To Get Beyond Racism
Position 15: Ducking on Affirmative Action
Position 20: College by the Numbers
Position 21: Race and the Uses of Law
Position 22: Confusion on Affirmative Action
Position 24: Ways to Define a Diverse Campus
Position 25: Picking the Best Student Body
Position 27: Upholding Affirmative Action
Position 29: Race and College Admissions
Position 32: Recalling an Ugly Time

3, 6, 15, 20, 21, 22, 24, 25, 27, 29, 32, 33, 35, 43, and 57 support “diversity rationale” and “remedy rationale”. In the second category[5], I organize different opinions towards "discrimination" and "colorblindness," and articles 4, 9, 10, 13, 14, 18, 20, 26, 48, 50, 51, and 54 fit into this group. For the last category[6], I add the "New understanding of Affirmative Action" because I find out that “Diversity” and “Remedial” rationales and contentions may not include the 21-century new understanding and prospects of US higher education admission and racial relations. For example, some schools have taken to removing SAT scores to achieve Affirmative Action. Article 16,17, 29, 30, 31, 33, 37, 40, 41, 47, 49, 55, and 56 demonstrate new understandings that may ebb and flow and evolve over time. I found that except for articles 4 and 28, which oppose Affirmative Action because Affirmative Action reinforces racial superiority (Black superiority) and official discrimination, all other articles support Affirmative Action. Articles categorized as no opinions[7] are 5, 8, 23, 38, 51, and 52 because they do not have

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Position 33: Affirmative Action and Reaction Race is Never-Neutral
Position 35: Editorial Observer Why Justice O'Connor Could be Affirmative Action Unlikely
Position 43: Where’s the Talk About Racial Justice?
Position 57: How Our Discussion of Race Becomes Distorted

[5]Position 4: Civil Rights Commission Majority VS a National Consensus
Position 9: Even so Affirmative Action Lives
Position 10: What Us Said in Affirmative Action Suit
Position 13: Bad Law On Affirmative Action
Position 18: Segregation Anew
Position 20: College by the Numbers
Position 26: Learning from Diversity
Position 48: A Long Slow Drift From Racial Justice
Position 50: The Supreme Courts Diversity Dilemma
Position 51: Affirmative Action Isn't Just a Legal Issue It's Also a Historical One
Position 54: Harvard Asian American Racism

[6]Position 16: Abroad at Home;Down the River
Position 17: Texas Law School Was Integrated in 1950
Position 29: Race and College Admissions
Position 30: A Crucial Decision on Race
Position 31: An Anti-Quota Smoke Screen
Position 33: Affirmative Action -- and Reaction; Race Is Never Neutral
Position 37: Solving the Diversity Dilemma
Position 40: Courting Confusion.
Position 41: Affirmative Distraction
Position 47: Historical Lessons
Position 49: What Tells us about Affirmative Action and Race
Position 55:That Affirmative Action Ruling Was Good. It's Rationale, Terrible.
Position 56: The Case Against ‘Excellence’ at Universities

[7]Position 5:Despite Justice Dept., Affirmative Action Is Alive
Position 8: Bork Is No Centrist Disguised as a Conservative
Position 23: Ways to defined a diverse campus
Position 38: A Win for Affirmative Action
Position 51: Affirmative Action Isn’t Just a Legal Issue. It’s Also a Historical One.
Position 52: Making Affirmative Action White Again

opinions. So I do not count them in these categories. Besides, all authors do not accept quotas, which means setting seats for minorities or special programs like UC Davis medical school. There are no clear boundaries between these three categories of classification, as many authors discuss both the arguments in favor of Affirmative Action and the definition of discrimination. To avoid confusion, I did not put one article into separate categories. I focused on the stance of the author in the overall article. If articles have distinctive insights, I will provide additional analysis. I would like to remind you of the three whiteness ideologies here: (1)Institutions treat white interests as the priority and protect white privilege. (2) Institutions have explicit sustainable goals or treat the meaning of certain goals as "obvious." (3) Any elusive and vague rhetoric that sounds conceivable, but no constructive guide to enriching racial minority students' experience in higher education. Since this thesis focuses on whiteness ideology, I will not discuss the rationales supporting "diversity" and "remedy".

First of all, the first group of articles support “diversity rationale” and “remedy rationale”, which does not mention white priority. This article group praises the advantages of the "diversity rationale" Justice Powell already proposed. They also believe that diversity could help students understand different cultures better and exchange different ideas. Article 32 *Recalling An Ugly Time* insists that legal challenges against Affirmative Action are backed by a web of well-financed conservative and right-wing organizations. Bob Herbert writes:

> “The driving force behind the Michigan University cases, for example, is the Center for Individual Rights, a right-wing outfit that in its early years, as Mr. Cokorinos noted, received financial support from the Pioneer Fund, an organization that spent decades pushing the notion that whites are genetically superior to blacks. We need to see this picture more clearly. There's a reason why so many mainstream individuals and groups, and some of the nation's largest corporations, have filed briefs with the Supreme Court in support of Michigan's effort to save its affirmative-action programs" (Herbert, 2003).

The author believes that diversity brings benefits to all people and that conservatives should not try to bring people back to the days of racism. Even though I have already examined some arguments of Justice Powell, I cannot assert that some of these authors agree with all of his arguments. In the message of these articles, I do not find them trying to convey expectations of white predominance in higher education.

The second category articles talk about "discrimination" and "colorblindness". I put "discrimination" and "colorblindness" in one category because these two concepts are controversial and susceptible to varying interpretations in the law. All of the writers are against the colorblindness law because race is still a significant determinant of quality of life in America, and meritocracy is not fair compared to Affirmative Action. They also believe that the courts decline to review past discrimination, proving it becomes a high bar to achieve. These articles have expectations for institutions' sustainable goals. They believe that higher education institutions must support race-conscious admissions to help minorities and make up for past discrimination. They are also critical of the Supreme Court's vague approach to discrimination. In article 14 *Discriminating Liberal*s, Clint Bolick argues that Liberals discarded equality and embrace equal results by discrimination. He writes:“ In this way, modern liberals perpetuate the Plessy decision by replacing the notion of ‘reasonable’ racial classifications with the concept of ‘benign’ discrimination. America's tortured history provides abundant testimony that racial classifications are never reasonable or benign. They invariably divide and injure every American, white and black, male and female. As Justice Harlan recognized, no middle ground exists. The Government will either have the power to classify and discriminate or it won't” (Bolick, 1996).

That's why Bolick believes that the definition of discrimination should be clarified. The court should have a clear definition of means and ends as well. The author believes that the law cannot support the use of discriminatory means to achieve a non-discriminatory result. Thus, these authors' expectations oppose the conservative interpretative frame because the historical legacy of racism continues to impact present-day race relations, and racial discrimination has not been eradicated with the civil rights movement's success. I do not find them conveying white prioritization in higher education.

In the last category, these articles do have different opinions towards Affirmative Action. So I further categorize them as alternative approaches, diversity rationale justification, and Asian Americans conversation. Article 16, 34, 40, 41, and 49 proposed new visions to see the Affirmative Action problem. In the *Courting Confusion*, Charles Fried says:

"Democrats fear a court that will embrace the constitutional rigidities of its most conservative members. Republicans fear a court that will once again seek to impose in the name of the Constitution the agenda of a liberal elite. I fear an indefinite and incoherent prolongation of a fin-de-siècle jurisprudence, where the court serves as nothing more than an ad hoc arbiter of issues it finds too difficult to decide in a principled way" (Fried, 2004) .

This author proposes new non-ideological visions to understand Affirmative Action. Other authors claim that black poverty, political powerlessness, and shabby K-12 schools equipment are non-negligible problems that haven't been eradicated. In article 49, the author compared Israel's class-based Affirmative Action; and he said that the Supreme Court could urge institutions to adopt admissions practices that generate a mix of students from different socioeconomic backgrounds (Alon, 2015). There is substantial research regarding class-based Affirmative Action, but I will not study and evaluate this topic in this thesis. [8]Article 17, 29, 30, 31, 32, and 37 mainly talk about their concerns in the top ten percent plan in UT Texas. Most of these concerns are about persistently unequal secondary education, which makes the program unequal. And how equity can be better achieved on campus and in the workplace. Article 54, 55, and 56 argue that Harvard admission keeps racial balance at the expense of Asian Americans and supports the affordability and accessibility path from community college to a four-year college. In this category, except articles 34, 40, 41, and 49, none consider approaches to enriching racial minority students' experience in higher education.

In liberal mass media, almost no authors questioned the legitimacy of Affirmative Action. Above, I observed that the Supreme Court does not do the work to provide constructive guides to enriching racial minority students' experience in higher education. What I had expected was that the NYT writers would have the resolve to suggest ways to help minorities, but disappointingly almost all of the articles engage in ideological arguments. The core arguments in their discussion of Affirmative Action keep coming back to "discrimination," "colorblindness," "diversity or remedy." The message they want to send to their readers is to get people to view Affirmative Action with a liberal ideology, not to help address deep-rooted racism. Although the leading tone of NYT's article is pro-equality and inclusion, the first and second Whiteness ideology indicators do not appear. Still, they are fully compatible with the third indicator. So these eloquent arguments without expressing minority predicament are also a way of white domination.

Wall Street Journal Articles Analysis

This section will do the same analysis work for the Wall Street Journal writers' opinions towards the Bakke decision and Affirmative Action. The conservative Wall Street Journal has the

[8] So I believe it's a good proposal to help minorities.

largest circulation in the country. And based on the reputation, the Wall Street Journal has won the 5th most Pulitzers. There are almost no resources related to Affirmative Action before 2000 on the Wall Street Journal website, so I chose Dow Jones Factiva-a digital archive of global news content and the parent company of Wall Street Journal. I used "Bakke Affirmative Action" and selected the articles that range from 1978 to 2021. I expanded my search to 2021 because the impact of the case of Bakke on Affirmative Action was profound, and necessary to take into account its ongoing impact. I will discuss how these authors convey their understanding of racially-based Affirmative Action after the Bakke decision and their understanding of US racial relations. There are 78 articles from the Factiva search engine, but I do not account for 18 articles[9] 1,7, 8, 15, 21, 25, 30, 39, 44, 50, 52, 55, 56, 57, 61, 62, 64, and 69 because these contents do not fit into the thesis topic or mention facts or timeline of the court decision. For example, article 1 argues that President nominates Attorney General-William French Smith tough conservertive. He supported that Bakke should be admitted from UC Davis. He believed in Affirmative Action but less zealously towards it. Since these articles do not have many varied topics, I group them into five categories and examine whether they fit into one or more indicators of whiteness ideology. The first[10] category is Articles 24, 45, and 49, which support Affirmative Action. The second[11] are Article 4, 6, 9, 10, 11, 12, 13, 14, 17,18, 19, 20, 22, 23, 31, 32, 33, 36,

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[9]Article I do not Count:
Article 1: President Nominates Attorney General-William French Smith Tough Conservertive
Article 7: Record Expected In Amicus Briefs For Abortion Case
Article 8:The Black Struggle, Continued
Article 15: A Color Blind Constitution
Article 21: World Wide
Article 25: A Persuasive Case for Affirmative Action
Article 30: We Need Another Brown v Board of Education
Article 39: Thinking Things Over: Affirmative Action: Devil in the Details
Article 44: The Supreme Court delivers a victory--but not a total one--for colorblindness
Article 50: India Affirmative Action
Article 52: Michigan Prefers Equality; Michigan votes for equality
Article 55: Best of the Web Today - January 26 2007; Good news from Iraq--in 27th paragraph of New York Times story. Plus murder plot targets Energizer bunny!
Article 56: Getting Beyond Race; Justice O'Connor ponders the twilight of affirmative action
Article 57: Bill Kristol, liberals and affirmative action
Article 61: The Supreme Court's Gun Showdown
Article 62: The Supreme Court's Gun Showdown
Article 64: The American Conservatism of Thurgood Marshall; The Elena Kagan hearings have wrongly portrayed him as an extremist
Article 69: Supreme Court Decisions Involving Affirmative Action

[10]Article 24: A Persuasive Case for Affirmative Action
Article 45: High Court's Ruling on Race Could Affect Business Hiring
Article 49: Justice O'Connor's Real World Wisdom

[11]Article 4:Supreme Court, in 6-3 Vote, Backs Hiring Goals to Correct Sex Bias
Article 6: Choosing Freshmen: Who Deserves an Edge?
Article 9: Tales from an Oppressed Class
Article 10: Pricing Health Care: Quotas in Clinton's Health Plan
Article 11: Rule of Law: Coronation of a Quota King at Justice

37, 38, 40, 42, 43, 51, 53, 58, 59, 65, 67, 68, 70, 71, 72, 73, and 74, which are all against Affirmative Action. Even though this category seems big, all these articles demonstrate , through their correspondence to my three indicators, white hegemony in discussions of US higher education. The third[12] category is Article 3, 5,16, 27, 28, and 46, which all cover authors'

Article 12: Rule of Law: In Texas, a Law School Flunks the Bakke Test
Article 13: Appeals Court Rejects Affirmative-Action Plan at Law School
Article 14: A Color Blind Constitution
Article 17: The Facts Behind the Fray
Article 18: The New Segregation
Article 19: The Fall of an Affirmative Action Hero
Article 20: Nevada Offers Supreme Court Another Piscataway
Article 22: California Dreams
Article 23: The New Battleground Over Race and Schools: Younger Students
Article 31: A Court Intrigue
Article 32: The Court Social Agenda
Article 33: High Court to Consider Legality Of Race-Based Admissions Rules
Article 36: Bush Decries Racial Preferences
Article 37: Best of the Web Today
Article 38: Affirmative Action': Devil in the Details
Article 40: What Makes a Difference
Article 42: Diversity's Stigma; Jayson Blair and the Cost of Racial Preferences
Article 43: Affirmative-Action Ruling Could Outlaw Minority Internships
Article 51: Michigan Prefers Equality
Article 53: Preferences Forever? The University of Michigan's President Does Her Best George Wallace impersonation.
Article 58: Obama is No 'Post-Racial' Candidate
Article 59: Barack Obama's Rise Has Americans Debating Whether Affirmative Action Has Run Its Course
Article 65: Race and the Law at the Supreme Court; With Fisher v. University of Texas, the court has a chance to do the right thing—end the use of racial preferences
Article 67: For Discrimination' by Randall Kennedy; A Scholar Deftly Presents the Case Against Affirmative Action
Article 68: First Among Equals; An Orwellian dissent from a muddled ruling States had rights to ban racial preferences
Article 70: The Civil Rights Act at 50; The landmark law broke Jim Crow, but it has also been abused for ends that its authors never intended
Article 71: The Battle Of Ann Arbor
Article 72: Affirmative Action Lands in the Air Traffic Control Tower; The Obama administration forces the Federal Aviation Administration to move away from merit-based hiring criteria.
Article 73: Thoughtcrime of the Day; Justice Scalia gets smeared for “racist ideas.”
Article 74: Colorblindness Succeeds in California; Why reopen the affirmative action debate, when the current system is working for everyone

[12]The Third Category articles:
Article 3: High Court's Decisions in Three Job-Bias Cases May Have Critical Effect on Affirmative Action
Article 5: REVIEW & OUTLOOK (Editorial): After Justice Powell
Article 16: High Court Backs S&Ls on Accounting, Declines to Hear Affirmative-Action Case
Article 27: The Abolition of Merit; The latest "affirmative action" plan: Abolish merit altogether

proposed unaddressed questions on Affirmative Action. The fourth[13] category is articles 35, 47, 54, 60, 66, 75, 76, and 78,demonstrating why Affirmative Action is related to ideological conflict. The fifth[14] category is Articles 2, 26, 34, 41, 48, and 77, which mentioned minority predicament in higher education.

First category of articles support Affirmative Action without showing explicit indicators of whiteness ideology, but they are still full of confusion. I am not surprised that only a few articles support Affirmative Action in conservative media. These articles claim that diversity has value to the institution because many minority students achieved success through remedial policies. They support Justice O'Connor's ruling on the Michigan decision (race can only be a plus factor in admission), making the US better. For the racial imbalance problem in business, some suggest finding other ways (replace race consciousness admission) to enroll minorities in selective universities that can lead to promising careers and big salaries. Some critics claim that athletics is the most robust Affirmative Action(some colleges up to 15% athletic admission) and are unsatisfied with legacy privileges. Thus, authors who support Affirmative Action expect to see a more diverse and fair admission process to help minorities succeed. However, this empty and vague rhetoric sounds conceivable but not practical, which fits into the third whiteness ideology indicator.

Articles 2, 26, 41, 34, and 77 mentioned minority predicament in higher education but only proposed to improve education at an earlier stage of life for minorities. These authors claim improving elementary and secondary schools produce college, and providing natural alternatives

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Article 28: Georgia on Our Mind; Another court strikes down racial preferences
Article 46: The "diversity" argument shows why it's nonsense to say Bush lied about Iraq

[13] The Fourth Category articles:
Article 35: Lott and the Race Card
Article 47: Race Matters: Court Preserves Affirmative Action
Article 54: Affirmative Action Has Become a Way of Perpetuating, not Getting Beyond, Racism
Article 60: America's Universities Are Living a Diversity Lie
Article 66: A Liberal Critique of Racial Preferences; Programs to increase diversity in higher education should be based primarily on class
Article 75: The Downside of Diversity; On campus, identity politics has become a dogma that damages independent thinking and the pursuit of truth
Article 76: Politics Books: The Agony of the Elites; A pointed critique of egalitarianism on campus by former Yale Law School dean Anthony Kronman
Article 78: Will New CBO Score Kill Build Back Better?

[14]The Fifth Article Category
Articles 2: Losing Ground: Minorities' Enrollment In College Retreats After Its Surge in '70s --- Suspected Causes Include Cut In Aid, Less Recruiting And Lack of Role Models --- Isolation Problem at Brown
Article 26: The End of Preferences; Courts are likely to see that "diversity" is a thin rationale for racial preference
Article 34: Bakke to the Future; The Supreme Court may finally strike down racial preferences
Article 41: Not So Affirmative; Is "diversity" on campus even a goal worth pursuing
Article 48: Formula-Free Diversity --- High Court Allows Use of Race On a Case-by-Case Basis; Hiring More Admissions Staff
Article 77: The Duo That Defeated the 'Diversity Industry'; Californians rejected racial preferences even more soundly this year than in 1996. Will the Supreme Court reverse itself next?

to help students in failing public schools may be the best and most effective “affirmative action” around. However, some authors are against Affirmative Action in college admissions because better K-12 education could prepare students regardless of ethnicity. Only one, Pittsburg black Professor, Lloyd Bond, claims that after the civil rights movement, many institutions of higher education admitted more minority students (Watkins, 1985). But in the 1980s, even as the minority population grew, enrollment dropped sharply, and the number of high school graduates remained constant. Authorities attribute these phenomena to the curtail of federal funding, and more student loans. Persistent institutional racism(blacks not as good as whites, minorities in administration. Minority predicament is lacking minority role models, less minority programs like Hispannic courses, and higher Hispanic dropout rate. Recruiting and retaining black students was a priority in the 1960s but wasn't in the 1980s. This reflects a general trend away from affirmative action" (Watkins, 1985). These authors only propose a very macro and vague solution to enhance K-12 education equality in this group of articles. Their rosy vision is that with K-12 education reform, minorities will compete on an equal footing when it comes to college. Such a good idea would require all the social policy reforms that we don't see mentioned in these articles. While I did not research the background of each author, it is interesting to note that the only outlier who pointed out the plight of minorities was a black professor. So except for Article 2, the other articles are cloaked in educational equity reform to achieve less Affirmative Action, which fits into the third whiteness ideology indicator.

Writers of Article 3, 27, 5, 16, 28, and 46 do not have unique stances either support Affirmative Action or not. But they proposed some disputes surrounding Affirmative Action and issues in some cases. Here are several representative questions: (1) whether the Constitution permits local government officials to voluntarily take affirmative-action steps that give preference to minority public employees in the absence of a court finding of past discrimination; (2) whether federal civil-rights law permits a judge to approve an affirmative action agreement that uses numerical goals or quotas to aid minority workers; (3) whether it is an illegal quota when the court ordered the union to achieve 29% minority membership in Firefighters Local vs. Stotts [15](4) whether social justice requires us to use race to deny or grant opportunity to individuals based on their group. These questions from Affirmative Action cases are all confusions the Bakke decision hasn't addressed. Some authors also argue that Bakke was a bad law that led to uncertainties surrounding the colorblind Constitution and caused a torrent of ligations. Derrick Bell explained why increasing the number of ligations could distract from the diversity rationale after the Michigan undergraduate decision. He argues that Justice O'Connor's opinion confuses Bakke's judgment because the vague rhetoric increases the controversy over Affirmative Action and encourages more litigations that exert pressure for Justice to oppose Affirmative Action (Bell, 2005). The consequences of Michigan cases caused lots of colleges to erase racial criteria or use a percentage plan (Bell, 2005). As time goes on, there are more and more cases regarding Affirmative Action, and some issues are still very controversial.

It is not hard to see the Affirmative Action debate as an ideological debate, and the Supreme Court reconciles opposing sides to find a balance. Articles 35, 60, 75, 76, 78, 47, 54, and 60 demonstrate why Affirmative Action is related to racial ideological conflict because these authors start from a personal stance of attitudes towards Affirmative Action, rather than considering what kind of help minorities need. Interestingly, these articles insist that a corrosive

[15] *FIREFIGHTERS LOCAL UNION NO. 1784 v. STOTTS* 467 U.S. 561 (1984)

race-conscious policy should not discriminate against white students. Article 35 *Lott and the Race Card* claims that democrats are the politicians who have played the race card in recent years; Republicans may once have used race to polarize the electorate, especially in the South. Article 76 claims that college education elevates equality at the expense of liberty because "If schools were allowed to discriminate as a matter of justice, Mr. Kronman implies, the practice of race-conscious admissions might end some day." Article 60 argues that illegal discrimination against white and Asian Americans requires some students to suffer racial discrimination for the sake of a perceived common good-diversity. But there is no empirical evidence that diversity could achieve a better learning outcome. Many Affirmative Action policies only focus on benefits to minority students. Others define benefits in nakedly ideological terms, declaring the policies successful if they seem correlated with the adoption of liberal views. A large share relies on survey data that substitute subjective opinions for an objective learning measurement. Broadly stated, the "conservative" position is that these laws protect individuals from discrimination, whereas the "liberal" position is that discrimination is fine in the pursuit of "diversity" or integration but not of white supremacy. In article 47, the author argues that Affirmative Action perpetuates discrimination because Affirmative Action means only whites can be racists and alienate some whites and Asian Americans (Kronholz et al., 2003). The Bush administration, pushed by conservative supporters, had told the high court that schools instead should exhaust race-neutral methods to expand minority enrollment before resorting to preferences. So, according to the Bush administration, Affirmative Action should be the last resort to address the racial imbalance in higher education. Article 47 also argues that While President Bush probably would nominate an ideological twin if the chief Justice were to step down, Justice O'Connor's replacement would more likely alter the court's ideological makeup (Kronholz et al., 2003). All these opinions claim that white students and Asian American students are victims of Affirmative Action because liberal positions weigh more on diversity. That is to say, white students and Asian American students are in the same camp of those who are "innocent" and carry the burden of Affirmative Action. So it is clear that institutions should not adopt "discriminatory" Affirmative Action against white students. Portraying Asian American students as victims of Affirmative Action is a model minoritization to demonstrate the "distorted fact" that minorities could succeed without Affirmative Action. Article 75 provides a new perspective to criticize the diversity rationale. The author writes:

> "One is that it encourages minority students, and eventually all students, to think that a departure from the beliefs and sentiments associated with their group is a violation of the terms on which they were admitted to the university. Students remain in the corners to which they have been assigned. Motivated by politics but forced to disguise itself as an academic value, the demand for diversity has steadily weakened the norms of objectivity and truth and substituted for them a culture of grievance and group loyalty" (Kronman, 2019).

That is to say; minority students are assigned roles to contribute to the community based on race. In exchange, they were given a chance to be admitted. Minorities students should fulfill the expectations of their racial group. Thus, the white majority still dominates the racial relations and the role of minorities in higher education.

Among the articles against Affirmative Action, I have divided them into four categories. The first category is articles 4, 31, 33, 36, 37, 40, 51, 57, 58, 68, 72, and 74, which are all against quota and diversity. The second category is articles 6, 9, 13, 14, 32, and 59, which discuss how white people have been negatively affected by Affirmative Action. The third category is articles

10, 12, 17, 18, 19, 22, 43, 46, 65, 67, 72, and 73, which describe the performance of minorities in higher education. The fourth category is articles 11, 17, 20, 23, 41, 38, 53, and 70, which discuss the terrible effects of race consciousness. First of all, articles 4, 31, 36, 37, 51, 57, 58, 72, 74 are against quotas and questioned diversity rationale's legitimacy because only personal merits (standard tests scores) and colorblind admission are fair in admission. In articles 6, 9, 13, 14, 32, and 59, all authors argue that Affirmative Action is a policy of reverse discrimination that hurts whites. Whites should also be favored by Affirmative Action, especially impoverished whites. The third category of articles says that increasing the enrollment of minorities occurs for reasons of "political correctness." Minority students are less qualified, and admitting more of them will not improve their overall academic performance. Many scholars argue that minority students should go to less selective flagship universities to succeed. Some even attribute the racial wealth gap to roots of history and culture rather than discrimination. The last category of articles argues that race has been abused as a factor in admissions by violating the equal protection clause and privileging minorities who are already privileged. In a nutshell, this group of articles demonstrates the first whiteness ideology indicator: institutions treat white interests as the priority and protect white privilege. Two examples show how conservatives claim that affirmative action policies favor less-qualified applicants over more qualified applicants in the name of obtaining the "right" racial and gender mix, which will cause potentially dangerous situations in the future. First, in the *fall of an Affirmative Action hero,* Patrick Chavis got into UC Davis through a special program, but the California state medical board has suspended his license because two of his patients died through his treatment (Chavis, 2015). So the author concludes that when society devalues merit in the name of "diversity" and stops treating people as individuals, they will skirt danger ever since getting out of the medical school they are not qualified to attend. Another example is that the *Federal Aviation Administration Quietly Moved Away From Merit-Based Hiring Criteria* in 2015 to increase the number of women and minorities who staff airport control towers. The writer argues that this policy favors less-qualified applicants, harming passengers (Riley, 2015). In the absence of data analysis to support that these two examples are commonplace, such anecdotes would deepen widespread prejudice against minority beneficiaries of affirmative action. It is also the hegemony of white supremacy to let minorities go to universities that are easier to get into because it reinforces the belief in inequality and is arguably a condescending offering.

All these article groups fit into the whiteness as property, exclusion, and expectation. According to Harris, courts established whiteness as a prerequisite to exercise enforceable property rights, such as the right to not have one's land stolen or the right to not be enslaved (Harris, 1993). She also argues that the right to exclude was the central principle of property rights, and white privilege became an expectation that could not permissibly be intruded upon without consent (Harris, 1993). According to her analysis, Bakke's expectation of admission was premised on the expectation that non-whites would not be admitted ahead of him because he may not have been "better qualified" than other applicants, as twelve different medical schools rejected Bakke, and because he did not challenge age and legacy admission factors, as he only challenged race-based admissions. So Harris says: "The Court demonstrated its sympathetic concern for his interest in this circumstance by deferring to his vested property interest in whiteness and intervening to reorder the situation to his benefit and in accordance with his expectations" (Harris, 1993). That is to say, white people should be qualified by race in admission because they believe excluding nonwhite opportunities to access property is taken for granted. These articles against remedial Affirmative Action all complain about discrimination

against whites because Affirmative Action breaks their expectations in admission. They also ignore preferential policies for whites that already exist, like legacy, admit, and social policies that once benefited whites after the Great Depression. The idea that sending minorities to less selective universities is these authors' own wishful thinking rather than a constructive guide to help minorities to achieve success. These authors arbitrarily assume that such an approach is right because they fail to understand what meaningful learning for minorities is. They may even think that allowing substantial minorities into higher education is a benevolent offering. Thus, this category articles perfectly fit into the first and third whiteness ideology indicators.

Here I would like to say that these articles fit into the first whiteness ideology indicator and "selective color blindness." The simple way to describe it is the double standard of colorblindness. When remedial policies benefit minorities and do not fulfill some white people's expectations, some people argue that it is "reverse discrimination." But when minorities suffer continued harm in higher education, columnists choose to ignore or even permanently shame them. Contrary to the Supreme Court's view, mass media like the Wall Street Journal guide the information people receive daily and convey values. Suppose most ordinary people attribute their lack of success at some point to minority predation and use selective color blindness to justify what is going on around them. In that case, the influence of whiteness ideology will be more profound.

SFFA v. Harvard lower court decision and News Article analysis

The United States Court of Appeals For the First Circuit affirmed the lower court decision that Harvard College's admittedly race-conscious undergraduate admissions process does not violate Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. ("Title VI") by discriminating against Asian American applicants in favor of white applicants. The Supreme Court's ruling will likely be handed down in 2023. So the United States District Court District of Massachusetts decision and the United States Court of Appeals For the First Circuit decision are only available court opinions. Even though the latter is the "higher authority," the First Circuit Court affirmed the District Court opinion without new arguments. So I decided to organize and analyze the Court's rhetoric and goals and then categorize this rhetoric into the whiteness ideology indicators. The purpose of the analysis was to find whether the rhetoric and goal of the SFFA v Harvard decision justify white dominance in U.S. higher education.

I find arguments and rhetoric in the opinion fit into three whiteness ideology indicators- (1) Institutions treat white interests as the priority and protect white privilege. (2) Institutions have explicit sustainable goals or treat the meaning of certain goals as "obvious." (3) Any elusive and vague rhetoric that sounds conceivable, but no constructive guide to enriching racial minority students' experience in higher education. I will first revisit the allegation and then analyze the decision's fact finding in terms of these ideological indicators. Then I will discuss whether or not these arguments fit into each indicator and other findings that may relate to whiteness.

In this case, the plaintiff Student For Fair Admission alleged that Harvard fails to meet the Supreme Court's standards for the permissible usage of race in admissions in these ways: (1) it engages in the racial balancing[16] of its undergraduate class; (2) it impermissibly uses race as more than a "plus" factor in admissions decisions; (3) it considers race in its process despite the existence of workable race-neutral alternatives; and (4) it intentionally discriminates against Asian American applicants to Harvard College. According to the table of contexts of the lower

[16] Racial balancing means institutions consciously balance the racial composition of the class.

Court ruling, there are five parts: (1) Findings of fact: diversity, admissions process, and litigation; (2) Findings of fact: non-statistical evidence of discrimination; (3) Findings of fact: statistical analysis; (4) Findings of fact: race-neutral alternatives; (5) Conclusions of law.

First, I argue that Harvard uses the diversity rationale to justify existing programs to help minorities, but these programs are perfunctory. The Court explains the "diversity" rationale as follows: "The evidence at trial was clear that a heterogeneous student body promotes a more robust academic environment with a greater depth and breadth of learning, encourages learning outside the classroom, and creates a richer sense of community. The benefits of a diverse student body are also likely to be reflected by the accomplishments of graduates and improved faculty scholarship following exposure to varying perspectives. In aid of realizing its mission, Harvard values and pursues many kinds of diversity within its classes, including different academic interests, belief systems, political views, geographic origins, family circumstances, and racial identities" (SFFA v. Harvard, 2019). Harvard followed the previous Affirmative Action cases' "diversity" rationale and no new justification is provided here. The only information we can get here is that Affirmative Action is not a remedial policy that institutions intend to prioritize. The entrenched in the diversity rationale is almost taken for granted that the whole purpose of Affirmative Action is diversity. However, Harvard claims that they do help minorities through its Undergraduate Minority Recruitment Program ("UMRP"). The UMRP writes letters, calls, and sends current Harvard undergraduates to their hometowns to speak with prospective applicants. Harvard does not allow admission officers to take race into account in any ratings other than the overall rating. So race can only be a plus factor in a way that follows Justice Powell's reasoning in Bakke And Justice O'Connor's reasoning in Grutter v Bollinger. However, Harvard acknowledges unavoidable bias in the alumni interview: "Although the Interviewer Handbook contains a section on distinguishing excellences including 'ethnic . . . factors,' alumni interviewers are not explicitly told to boost the ratings they assign to applicants based on race or ethnicity. [DX5 at 11]. Alumni interviewers are, however, told to "[b]e be aware of, and suspect, your own biases" and that awareness of one's biases is important because "no one can really be 'objective' in attempting to evaluate another person" (SFFA v. Harvard, 2019). However, Harvard does not explain the weights of alumni interviews or of any institutional efforts to eliminate bias. In the admission process and preclude to this lawsuit, Harvard argues that alumni interview, Ryan Committee[17], Khurana Committee[18], and Smith Committee [19]are all dedicated to encouraging low-income students to apply to Harvard and ensure a diverse pool of students.

The Court attributes Asian Americans' disadvantageous positions to the lack of privilege, demonstrating the first whiteness ideology indicator because Asian Americans generally have less legacies and networking with Harvard compared to whites. So when a large portion of Harvard's enrollment is skewed toward Legacies on the Dean's or Director's interest list, or "ALDCs" privilege, whites are favored. The Court writes: "The lower admission rate for

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[17] Ryan committee: A committee to examine race-neutral alternatives to its race-conscious admissions practices

[18] Khurana Committee: The Khurana Committee "sought to examine and restate the benefits that the College derives – as an institution, and for its students and faculty – from student body diversity of all kinds, including racial diversity.

[19] Smith Committee: The Smith Committee evaluated whether race- neutral means, singly or in combination, would enable Harvard to achieve its diversity-related educational objectives.

staff-interviewed Asian Americans is driven primarily by the fact that Asian American applicants are less likely than African American and Hispanic applicants, and far less likely than white applicants, to be recruited Athletes, Legacies, on the Dean's or Director's interest list, or Children of faculty and staff ("ALDCs"), all of whom are advantaged in Harvard's admissions process (SFFA v. Harvard, 2019). Harvard's objective in giving tips to applicants based on criteria other than individual merits, such as to legacies and the children of its faculty and staff, is to promote the institution and is unrelated to the racial composition of those applicant groups" (SFFA v. Harvard, 2019). The Court wanted to convey that race does not matter in the admission of privileged applicants because Harvard does not use racial quotas for eligible privileged students. Harvard admission also assumes that Athletes, Legacies on the Dean's or Director's interest list, or "ALDCs' ' privilege have nothing to do with race. Harvard does not show the race demographics of faculty and staff, donors, and athletes. But Athletes is the largest Affirmative Action, and Legacy is the Affirmative Action for whites. Athletes, Legacies, on the Dean's or Director's interest list, or ALDCs are taken for granted. The logic is simple: If you do not have legacies and are connected to Harverd, it's your problem. Harvard neglects past discrimination effects on contemporary racial demographics and racial wealth gaps and refuses to recognize potential unintentional discrimination in admission. Harvard's position does not like substantial literature claims (Wu, 1995; Okihiro, 2014) that institutions portray Asian Americans as a model minority or forever foreign. Harvard does not assume that Asian Americans could use excellent test scores and activities to overcome their plights. Harvard is indifferent to disadvantaged Asian Americans and chooses not to see history. So Harvard's rhetoric perfectly fits into the first whiteness ideology indicator because the institution believes that privileges are a natural condition and assumed norm, which prefers whites to a large extent.

Furthermore, according to an analysis by the Office of Institutional Research, Harvard claims that Mark Hansen's Admissions Models and Low-Income Admissions Models[20] treat Asian Americans in an even-handed manner. The institution says: "Most notably, his models contain no controls for socioeconomic and family circumstances that correlate with race and also affect admissions decisions"(SFFA v. Harvard, 2019). So I argue that race affects socioeconomic and family circumstances and is then related to admission. But this is in contradiction to the previous arguments that Asian Americans are less likely to be in athletics, legacies, and ALDCs. On the other hand, the Court finds out that: "This updated analysis suggested that although low-income Asian American applicants were provided a tip relative to their higher-income Asian American peers, the magnitude of that tip might not overcome the negative relationship between Asian racial identity and admissions outcome when holding constant some variation in the profile ratings, gender, and applicants' academic index" (SFFA v. Harvard, 2019). Specifically, less advantaged Asian Americans could not overcome their plight even with Affirmative Action. Under such conditions, institutions still conclude that there is no bias in the admission process, which fits into the third whiteness ideology. The court agreed with Harvard's model which excluded the social plight of Asian American suffered and the potential negative impact of their racial identity. So low incomes Asian American applicants are not beneficiaries of Harvard's promises.

Harvard explains the importance of race in the admission process, which demonstrates their sustainable goals. The Court says: "It monitors the racial distribution of admitted students in

[20] Analysis by Harvard's Office of Institutional Research

part to ensure that it is admitting a racially diverse class that will not be overenrolled based on historic matriculation rates which vary by racial group. Because of these variations in yield rates by racial group, Harvard uses the racial makeup of admitted students to help determine how many students it should admit overall to avoid overfilling or underfilling its class" (SFFA v. Harvard, 2019). Harvard must have a standard for overfilling or underfilling racial groups, and the racial makeup must be a number, at least not a number embarrassing Havard and certain racial groups. Harvard also justifies the usage of race as a factor in the admissions processes: "Although there are no quotas for subcategories of admitted students, if at some point in the admissions process it appears that a group is notably underrepresented or has suffered a dramatic drop off relative to the prior year, the Admissions Committee may decide to give additional attention to applications from students within that group" (SFFA v. Harvard, 2019). Harvard does not explain what additional attention is. I assume further attention can be given more advantage in weighting race factors, paying attention to the student drop-off reasons, or generally using more time to evaluate applicants holistically. There is a fine line between goal and quota in the Harvard position. When Harvard has a concept of overfilling or underfilling, it is racial balancing. So as long as Harvard does not use numbers like 16 of 100 seats in Bakke, it justifies racial balancing by using "diversity" ends.

In the non-statistical evidence of discrimination section, it is contended that higher scores for Asian Americans to make the search list constitutes discrimination against Asian Americans. But the Court affirmed whiteness ideology because the Court accepts Harvard's explanation rather than SFFA's model of the same facts. First, SFFA alleges that search lists[21] are discriminatory against Asian Americans: "Some Asian American students, therefore, did not make the search list, when white students from the same area who had similar grades and SAT scores did. See [Oct. 15 Tr. 151:22–152:2]. SFFA, while recognizing that a list is a marketing tool, would have the Court consider this 'sparse country' disparity between the scores required for Asian Americans and whites to make the search list as evidence of Harvard's intent to impose more selective admissions criteria on Asian Americans to suppress Asian American representation at Harvard artificially" (SFFA v. Harvard, 2019). SFFA argues that the no difference should be based on race and "neutrality" means the same standard for everyone. Harvard should put white students and Asian American students who are from the same area and have similar grades on the search list. Otherwise, any departure from that is discrimination. The Harvard responses claim that a search list is only a marketing tool; it says: " Notably, however, in some of the same years that Harvard did not lower the sparse country SAT search list score for Asian Americans commensurate with the lower requirement for whites, it selected Asian Americans for the search list based on lower ACT scores than similarly situated white students from more urban states. See [Oct. 17 Tr. 151:13–152:4; PX2]. Overall, the inconsistencies in the search criteria do not seem to be linked to efforts to advantage or disadvantage any particular racial group, and it was unclear from the testimony at trial whether these variations were accidental or intentional. At root, although being placed on the search list results in recruitment

[21] Search List: Each year, roughly 100,000 students make it onto Harvard's "search list" through data, including test scores, that the college purchases from ACT which administers the ACT, and the College Board, which administers the PSAT and the SAT. High school students who make the search list receive a letter that encourages them to consider Harvard and may also receive follow-up communications.

and is correlated with a higher likelihood of admission, the search list is fundamentally a marketing tool that does not affect individual admissions decisions" (SFFA v. Harvard, 2019).

Harvard compares Asian American students with lower scores with urban white students scores. Obviously, SFFA talks about different standards for Asian Americans and whites. So it's confusing that both sides do not talk about different races in the same area, which means controlling race as the only variable. Most notably, Harvard's logic is that without measurable scientific evidence of accidental or intentional variables, Harvard does not have a bias against Asian Americans. They also claim that as long as admissions decisions are not based on a search list, it should not be evidence of discrimination. So Harvard does not care about the likely intentional discrimination in the institution's advertisement because it only needs a result it can portray as non-discriminatory. However, when an institution is highly suspect of treating students of different races differently, the claim that admissions results are fair has very little credibility. So Harvard arguments here fit into the third whiteness ideology because of its ignorance toward the minority in the search list. The search list is important even if it is not directly used for admissions. In other words, if Harvard does not think the students on the search list are potential Harvard students, then why would Harvard spend money on student scores data? The purpose of advertising is to convince targeted students to apply, not to mention that Harvard said there would be follow-up communication with the students on the search list. Meanwhile, the Court is not dedicated to finding discrimination in recruitment and the role and effects of search lists on individual students. So ignorance and indifference towards minority students are also important characteristics. Furthermore, the Court chose not to demand more compelling evidence about search list students and their percentages of application or admission to Harvard. So the Court here is playing a role of protecting Harvard interests.

Furthermore, in the characterizations of describing Asian Americans, Harvard demonstrates anti-Asian stereotyping. SFFA argues that Asian American applicants were described as being quiet/shy, science/math-oriented, and hard workers very often. In addition, "OCR (Office Of Civil Rights) found such descriptions ascribed to Asian American applicants more frequently. In some cases these comments actually originated from the interviews, teacher or counselor recommendations, or self-descriptions given by the applicant. While it was clear from the context of the statement that the readers were not criticizing the applicants, and that there was no negative intention, the comments do suggest a tendency to stereotype by calling the applicants "classic" (SFFA v. Harvard, 2019). Regarding the criticism that these characteristic sound like classic stereotypes towards Asian Americans, the Court claims that the Court is sensitive to the challenge of differentiating among discrimination, stereotypes, and actual characteristic. Harvard also explains why the assessments that Asian American students have academic and extracurricular ratings but were weaker on personal and athletic criteria are not classified as stereotypes. The Court affirmed a set of statistics Harvard provides: "Asian Americans were labeled 'standard strong ' more frequently than white applicants, and significantly more frequently than African American or Hispanic applicants. Approximately 15% of Asian American applicants in the original 10% sample were labeled standard strong, compared to 12% of white applicants, 4% of Hispanic applicants, and 1% of African American applicants" (SFFA v. Harvard, 2019). On the other hand, Harvard says: "Further, the higher proportion of standard strong Asian American applicants is consistent with the fact that Asian American applicants to Harvard's class are disproportionately unlikely to be among the weakest applicants: less than 21% of Asian American applicants received an overall rating of 4 or worse, compared to 24% of white applicants, 41% of Hispanic applicants, and 52% of African

American applicants. [PX621]. As such, it is not surprising that a higher proportion of Asian Americans than white applicants were labeled ``standard strong" (SFFA v. Harvard, 2019). So Harvard wants to use statistics to prove it considers Asian Americans as excellent applicants and the institution does not Asian American representation. It is true that everyone can be perceived as "quiet" and "science-oriented" regardless of race, but Harvard cannot prove that admission officers would presume that Asians should be more in line with such descriptions of characteristics. The discussion is whether Harvard's admissions process uses stereotypes against Asian Americans, but Harvard believes that there is no discrimination when students' ratings look Asian Americans friendly. Even though this argument imperfectly fits into the first whiteness ideology indicator, it justifies the power and dominance of the privileged group that willingly grants their "permission" to non-whites, which is also a kind of whiteness ideology. The conscious stereotype of Model Minority has also been perpetrated to claim that Asian Americans are doing so well and do not need more Affirmative Action. This seeming praise of Asian Americans is the racialization of Asian Americans because Asian Americans are not a monolithic group who can overcome disadvantages by themselves and have excellent grades (Kim, 2018; J. Lee, 2021). There is no explicit disparagement of blacks and Hispanic students, but from the data, blacks and Hispanics are not doing well enough as Asian Americans and whites. Asian Americans' "standard strong" data close to the white, or beyond the white to obtain the standard strong, then the Asian is excellent also no discrimination against Asian. So only Asian Americans are close to white achievement, and to be a part of a white group, is a sign of excellence. Asian Americans still need to be positioned in a society of black and white paradigms; they are not considered independent racial groups.

According to the statistical analysis, the Court approved Harvard's usages of Professor Card's statistical model that Harvard did not discriminate against Asian American applicants, and SFFA uses Professor Arcidiacono's statistical model[22]. I do not evaluate their statistical and econometric methods. I try to evaluate how they use and interpret different variables, which I find out that the absence of the court's explanation of important variables is puzzling. ALDS students took 30% of admitted seats. However, the Court has referenced numerous statistics based on data that excludes some or all ALDCs because SFFA used those metrics at trial. In addition, the Court acknowledges: "Overall admission rates for Asian American applicants are lowered slightly because they are underrepresented among ALDCs, who are admitted at a rate of 43.6% or nearly eight times the 5.5% admissions rate for non-ALDC applicants" (SFFA v. Harvard, 2019). As discussed before, Harvard does not care about Asian Americans' underrepresentation in ALDCs, the most privileged group in admissions. Most importantly, the Court referred to Professor Card's models that exclude some or all contentious ALDCs factors without giving reasons. The court did not explain why SFFA used the ALDS variable so the court would not allow Harvard to use the ALDS variable. While the removal of most of the ALDS has a strong suspicion of masking discrimination against Asians, the first whiteness ideology indicator cannot be concluded in the absence of evidence provided by the Court.

There are two important facts in the model for our purposes. (1) Asian American applicants are more likely to be outstanding in academic performance and white applicants are more likely to be recruited as athletes. (2) Asian American applicants generally receive weaker recommendations. In interpreting facts, Harvard does not engage in eliminating stereotypes. According to the Court, "Professor Card's multidimensionality analysis thus suggests that a partial cause of the race-related disparities in admission rates, when controlling for academic

[22] Two famous economic Professors.

performance, is that Asian American applicants' disproportionate strength in academics comes at the expense of other skills and traits that Harvard values " (SFFA v. Harvard, 2019). So this analysis conveys stereotypes that Asian Americans only spend time in academics rather than other skills. However, the model could not speculate that Asian Americans put less effort on other skills and traits that Harvard values and the Court could not prove the analysis without evidence. That is to say, "Asian American applicants' disproportionate strength in academics comes at the expense of other skills and traits that Harvard values" is an assertion, which could not find evidence or analysis. Stereotypes exist here that Asian Americans are treated as a monolithic group who can succeed in academic performance. However, this Court decision and experts' analysis never mention subgroups of Asian Americans and different predicaments of different ethnicities. This analysis may mislead people to disparage Asian Americans that are good at studying but lack other soft skills. The race-related disparities in admission rates could not speculate Asian Americans' characteristics because other reasons may affect their participation outside academics. For example, they may focus more on academic achievement because of their socioeconomic background. Lee and Zhou argue that how Success Frame-people value achievement and success-becomes a racial coding like an Asian thing (Lee & Zhou, 2015). They argue that Chinese and Vietnameses believe that securing a good job needs a good education like a bachelor degree or higher, which is a singular pathway to their success (Lee & Zhou, 2015). They contend that the racial coding of academics is attributed to the highly skilled Asian immigrants and Civil Rights Movements which open doors to non-whites immigrants (Lee & Zhou, 2015). In addition, they say: "Fields such as medicine, law, science, and engineer require exceptional educational achievement, credentials, and hard skills that may obviate or lessen potential discrimination and bias. Consequently, Asian immigrant parents direct their children into elite colleges, specific majors, and particular occupations so that they will be better protected from subjective evaluation " (Lee & Zhou, 2015). Asian Americans have strategies to support the Success Frame such as buying houses based on the school district, encouraging their children to take AP classes, and supplement education (Lee & Zhou, 2015). On the other hand, the intangible strategies are the effort effect mindset and collective mobilities such as sibling support and prioritize one kid as an educational investment (Lee & Zhou, 2015). That is to say, the success fram does not provide evidence that Asian American culture only values activities and tests. They simply treat studying as one of the ways they can succeed and are less likely to be harmed by race in some occupations. Professor Card also claims that: "Most notably, white applicants are significantly more likely to have made high solid school contributions to athletics, and this disparity counteracts the effect that Asian American applicants' relative academic and extracurricular strength would otherwise have on their admission rate (SFFA v. Harvard, 2019). The author took for granted that considerations of athletics are fair in admission to evaluate students' future capacity. White applicants may contribute more to athletics, but athletics privileges still exist in higher education admission. In *Punting our Future*, Fried argues that massive discrimination in favor of athletes admission advantage is larger than any preference such as legacy and minority admits (Fried, 2007). There are no ready measures, or even agreed-on definitions, of most of those traits that participating athletes' advantages attribute to non academic values (Fried, 2007). He says: "These days, it is not uncommon for parents to spend as much as $30,000 a year on private trainers, equipment, travel with elite club teams, marketers, etc., to position their kids as athletic recruits. At that price, athletic preferences will become just one more edge in the admissions game for the already most-privileged kid" (Fried, 2007). That's why the authors argue that sports that favor privilege shouldn't be such a large part

of higher education. While statistical models cannot consider the factors that influence any particular athlete's recruitment, it is important to figure out some of the spaces and privileges behind athletic criteria themselves that may only be relevant in the first place as a means of protecting white privileges.

The Court attributes disparity between Asian American applicants and white applicants to the school support rating which means high school teachers' recommendation or the rank of high school, beyond Harvard's control. The Court says: "Taking account of all the available evidence, it is possible that implicit biases had a slightly negative effect on average Asian American personal ratings, but the Court concludes that the majority of the disparity in the personal rating between white and Asian American applicants was more likely caused by race-affected inputs to the admissions process (e.g., recommendations or high school accomplishments) or underlying differences in the attributes that may have resulted in stronger personal ratings" (SFFA v. Harvard, 2019). In other words, race-correlated disparities in personal ratings for applicants who have similar academic qualifications may reflect underlying differences in the backgrounds and experiences of applicants that happen to correlate with race but are not racially motivated. Racism in the admissions process means that an admissions officer or Harvard admissions director has maliciously discriminated against a particular race. But as long as they don't admit to doing so, the court finds no racial discrimination. That being said, it is not clear that these sorts of considerations adequately explain the difference in personal ratings between white and Asian American applicants in Professor Arcidiacono's decile analysis or the similar analysis Professor Card has offered". So the implicit bias and negative effect on Asian Americans is supposedly irrelevant because beyond the higher education system's control. It is reasonable to speculate that racial discrimination and segregation still exist in k-12 education. Indeed, Harvard is not legally obligated to make up for the discrimination that Asian Americans may have suffered in k-12 education. Still, it follows, at least according to the Court, that remedial rationale is not the purpose of Affirmative Action. In a black/white binary paradigm, the Court overemphasized the academic and activity achievements of Asian Americans as good as or even better than whites' achievements. So the implication here is that when one racial group does well enough to overcome racial barriers, they do not need Affirmative Action. The author concludes that the purposeful racialization of Asian Americans eliminated Asian Americans in a black/white binary society. This article informs me that legal and policy perspectives always depict Asian Americans as a monolithic group who no longer need Affirmative Action. Lee makes similar arguments like other scholars who believe that the black/white binary paradigm makes the Asian American position very flexible, which means white could exploit Asian American identity to either disparage African Americans or make Asian Americans forever foreign (Lee, 2016). According to statistical models, the description of Asian Americans perfectly fits into this Asian American position criticism on Asian Americans' plight in higher education (Wu, 1995). The Court and Harvard do not explicitly demonstrate white domination in higher education. But their strategies to justify whiteness ideology are supporting legacies and athletics that less favor Asian Americans and ignoring Asian Americans' disadvantaged experience pre-college.

In the race-neutral alternatives section, Harvard claims that even though it could not consider all possible race-neutral alternatives, Harvard still justifies why some popular alternatives[23] SFFA proposed do not work. Harvard emphasizes the importance of race in

[23] Race-neutral Alternatives: Eliminate ED, Reduce ALDS tips, Recruiting Efforts and Financial Aid, Admit more transfer students, Eliminate standard test, and Place-based quota.

admission: "Currently, although always considered in conjunction with other factors and metrics, race is a determinative tip for approximately 45% of all admitted African American and Hispanic applicants. At least 10% of Harvard's admitted class, including more than one third of the admitted Hispanics and more than half of the admitted African Americans, would most likely not be admitted in the absence of Harvard's race-conscious admissions process" (SFFA v. Harvard, 2019). I do not know if these facts intentionally disparage African American and Hispanic students. But Harvard argues that without race being a determinative tip, African American and Hispanic students could not get into the world-famous institution. In the previous sections, Harvard claims that the admission process and disinterested officers can only use race in a holistic evaluation. When the race is a determinative tip for most African American and Hispanic students, it's a paradox that Harvard tried best to use race as a last resort. In addition, Harvard eliminated Early Action decisions from 2012 to 2015 , thus contributing to lower enrollment of African Americans and Hispanic students who may accept other colleges' Early Decision. So eliminating ED does not present as a race-neutral alternative. The ALDS tips do not work because removing these tips may adversely affect Harvard's attraction for qualified faculty and staff, alumni, and people who have significant contributions to Harvard. In addition, Harvard says: "Eliminating tips for ALDC applicants would have the effect of opening spots in Harvard's class that could then be filled through an admissions policy more favorable to non-white students, but Harvard would be far less competitive in Ivy League intercollegiate sports, which would adversely impact Harvard and the student experience" (SFFA v. Harvard, 2019). So based on the institutional interests, Harvard reluctantly removed ALDS and then filled more seats with non-Whites students. Harvard does not explain why favoring non-white students would cause less competition in Ivy League intercollegiate sports. So I speculate that Harvard's white athletes are more outstanding or Harvard is not willing to provide non-whites more seats. Furthermore, Harvard argues that admitting more transfer students could not be available due to campus housing; eliminating standard tests scores may not have vital academic performance metrics; and using place-based quotas may not be available or legitimate. Thus, Harvard argues that race-neutral alternatives are not accessible. Actually, Harvard disavows race-neutral alternatives because it will not give up the fundamental institutional interests. As discussed in this section, Harvard treats these alternatives bringing goals as "obvious". Simply giving Harvard seats for certain privileged classes is necessary. However, as long as there is not outright discrimination against minorities, then existing admissions policies will not take into account the potential adverse impact on minorities.

According to the race-neutral alternatives section, Harvard has lots of sustainable goals and interests, and it makes the trade-off job. Obviously, Harvard has to maintain a well-qualified staff and faculty pool by providing tips for ALDS. Harvard also wants to keep a student body with high standard tests and outstanding athletes. As Harvard says, while grades and standardized tests are not a perfect measure of merits, they are by far the best indicator. Providing legacy admissions and accepting donations are also networking and funding that Harvard values. As one of the world's top universities, Harvard is also known for its diversity in all aspects. All these goals are legal, but Harvard must make trade-offs because limited enrollment cannot meet the interests of all groups. So in the next section, I will keep analyzing potential whiteness ideology, which maximizes the disproportionality preferring whites.

In the conclusion of the law section, the Court affirmed the constitutionality of Harvard race-conscious admission. The Court argues: "The Court finds that Harvard's admissions program 'bears the hallmarks of a narrowly tailored plan' in that "race [is] used in a flexible, nonmechanical way" and considered "as a 'plus' factor in the context of individualized consideration of each and every applicant." Grutter, 539 U.S. at 334. Like the University of Michigan Law School in Grutter, Harvard "engages in a highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment," "this individualized consideration [is afforded] to applicants of all races," (SFFA v. Harvard, 2019) and its "race-conscious admissions program adequately ensures that all factors that may contribute to student body diversity are meaningfully considered alongside race in admissions decisions" (SFFA v. Harvard, 2019). According to the Court, Harvard does not mechanically use race in admission and is dedicated to fulfilling the compelling state interest in "diversity. I won't reiterate the diversity rationale here. The Court argues that Harvard admission fulfilled the previous Supreme Court ruling on Affirmative Action. The Court quoted Bakke decision: "The Court noted that the Harvard plan, previously endorsed by Justice Powell in Bakke, "certainly had minimum goals for minority enrollment, even if it had no specific number firmly in mind," but it reiterated that Justice Powell had "flatly rejected the argument that Harvard's program was 'the functional equivalent of a quota' merely because it had some 'plus' for the race, or gave greater 'weight' to race than to some other factors, to achieve student body diversity." Id. (quoting Bakke, 438 U.S. 317–18, 323)" (SFFA v. Harvard, 2019). So setting a minimum goal is not a quota as long as there's no specific number for one racial group. Furthermore, the Court claims that Harvard admission is narrowly tailored because applicants are evaluated as individuals rather than ethnicity or racial group members. Furthermore, the Court affirmed that Harvard did not burden Asian Americans because the Court finds that disparity in rating such as teacher and guidance counselor recommendations are minor and insufficient to explain Harvard’s intended discrimination. Most importantly, the Court explains the possible pool of applicants: "It is possible that the self-selected group of Asian Americans that applied to Harvard during the years included in the data set used in this case did not possess the personal qualities that Harvard is looking for at the same rate as white applicants, just as it is possible that the self-selected white applicants tend to have somewhat weaker academic qualifications than Asian American applicants" (SFFA v. Harvard, 2019). The Court claims that less qualified Asian Americans or whites may also apply to Harvard anyway, so the disparity in admissions is normal. But there is no evidence for this explanation. Furthermore, Harvard does not use racial balancing because there are no mechanically added points or reserved seats for certain racial groups. Harvard only allows race to be considered in the final evaluation, and race is no more a tip than any other tips like legacy and ALDS.

In general, the lower Court affirmed that Harvard's race-conscious admission process does not discriminate against Asian Americans. From the opinion, white prioritization ideology is implicit; Harvard's sustainable and obvious goals are trade-offs that may cause a disproportionate preference in admission, and Harvard disregards potential reasons that enrich racial minority students' experience in higher education. First, Harvard exploited Asian Americans as a political agenda by stereotyping them as typical good grade students who participate in lots of activities but at the expense of athletes or other characteristics Harvard values. So no matter socioeconomic or ethnic background, Asian Americans are still portrayed as model minorities who have outstanding merits. The most significant purpose of whiteness ideology can be achieved by combining the overrepresentation of Asian Americans and the need

of most African Americans and Hispanic because of their races as a decisive factor. Second, Harvard's sustainable goals are maintaining a well-qualified staff and faculty pool, keeping a student body with high standard tests and outstanding athletes, and maintaining seats for legacies. From the decision, Harvard does have stereotypes and bias towards Asian Americans but still lacks evidence to know whether Harvard prioritizes other interests at the expense of different interests. Furthermore, for the search list discrimination and high school rating disparity, Harvard disregard any Asian American disadvantage because it does not care minority experiences.

Summary of SFFA v. Harvard

SFFA wants more the "right kind of" Asian Americans to join the conservative camp toward Affirmative Action, which means higher social status Asian Americans. Thus, these Asian Americans could invest in whiteness. Lipsitz (2018, 146) provides the safety-oriented reasoning behind whiteness investments:

> Whether they are actually white or not, people who are whiteness-minded are trapped by its possessive investments. As individuals they may despise the overt racists in their midst or they may admire them. Regardless of their personal positions, however, they remain cathected to the possessive investment's premises and presumptions. Their commitments are often so deep because they cannot imagine what their identities would be like without the anchor of whiteness to provide the illusion of safety, stability, and security needed to fend off fragility and fear of failure. Cultural theorist Lauren Berlant explains how attachments "to compromised positions of possibility" produce a kind of "cruel optimism." Investing in whiteness means investing in fantasies of fulfilled selfhood that reside outside the self. A false subject needs a false object. People who do not know or like "who they are" crave degraded depictions of "who they are not," depictions that are often simply projections of what they despise or fear most in themselves. They become dependent on what Berlant describes as the continuity of form. Repeated invocations of white vanity and repeated condemnations of the imputed inhumanity of nonwhites provide, in Berlant's words, "something of the subject's continuity of the subject's sense of what it means to keep on living on and to look forward to being in the world.

According to SFFA's rhetoric, which accepts the possessive investment's premises and presumptions, minority underrepresentation is due to individual failures rather than discriminatory history. A whiteness mindset means white expectation to dominate or control the racial relations in higher education, and they fear the insecurity of increasing numbers of "who are not white." Especially nonwhites without safety and stability may aspire to something like "whiteness" precisely because they associate "whiteness" with safety and stability. For example, they might even think that white students could suffer from "reverse discrimination," but Asian Americans could not. In sum, SFFA wants some Asian Americans to believe in anti Affirmative Action and support “meritocracy.” So Asian Americans who buy into this ideology will believe in their merit could overcome racial barriers, indirectly investing in whiteness.

Harvard does not care about discriminatory approaches against Asian Americans in admission. Harvard uses the white American perspective to interpret US Asian American racial identity. That is to say, Asian American positions do not fit into the black/white binary. Hence, Harvard makes the Asian American position very flexible, which means the white perspective could exploit Asian American identity by ignoring Asian Americans' plight in the admission

process and denying their positions be the social group that suffers from "reverse discrimination." Harvard rhetoric also exemplifies what I called "selective color blindness," as the institution has discretionary power to see race or not. While Harvard wants to legitimate privileges and mostly prefer whites in the name of institutional interest, Harvard denies discriminatory approaches against Asian Americans. Nevertheless, when Harvard advertises the diversity of the campus, the overrepresentation of Asian Americans at Harvard is good for the public to imagine. Thus, Asian Americans are strategically racialized in Harvard admissions.

SFFA and Harvard use different strategies to achieve the same goal—state the unimpeachable whiteness in higher education and try to influence the public perception of Affirmative Action. Both institutions want to be anti-Asian American and pro-whiteness simultaneously.

I want to use "contradictory" and "confusing" to summarize the lower Court opinion. Race can still be used legally under conditions that satisfy diversity. Harvard does not consider remedial rationale anymore following the previous Affirmative Action rulings. Institutions exploited Asian Americans' overrepresentation in higher education to oppose Affirmative Action. In 2003, Justice O'Connor hoped that Affirmative Action would end in 25 years. Six years remain until 2028, and the Supreme Court will soon rule on the case. Suppose Asian Americans are still the model minority and Asian American elites being categorized in the black/white paradigm. Asian Americans neither have an advantage in the traditionally white majority legacy nor are they in the same position of overall lower academic achievement as Blacks and Hispanics. So whatever the motivations and potential outcomes of opposition to affirmative action, Asian Americans are in a delicate and easily exploited position. Thus, Asian Americans' position will contribute to the continued fracturing of US race relations.

SFFA Newsroom Articles

This section will examine SFFA newsroom selected articles towards the SFFA v Harvard decision and Affirmative Action conversation about Asian Americans. Student For Fair Admission is a non-profit organization supporting and participating in litigations of unconstitutionally usage of race in higher education. Articles the organization chooses to post on the website indicate the founder and supporters' mission. This official website is a tool that the organization communicates with the general public and tries to attract potential plaintiffs or donors who experienced racial inequality in college admission or who pay attention to the Affirmative Action issue. So these articles represent this organization's mission, interests, and ideology. There are different perspectives of talking about Asians; how SFFA portrays Asians is important to help the public know Asian Americans and even Asian Americans see themselves. I will discuss how these authors convey their understanding of racially-based Affirmative Action and the influence on US racial relations. There are 47 opinions from the website. I have sorted each article in chronological order, and the articles were then numbered numerically (see footnotes)[24]. N stands for Number; and what follows is the published time, article title, and

[24] N1: 2014.11.24-Asians get the Ivy League's Jewish treatment-US Today
N2: 2015.3.23-Admissions Lawsuit Plaintiff Pens Letters Blasting Record Purges-Harvard Crimson
N3 2015.3.30 -Yale Law School deletes admissions data after numerous FERPA requests-The Daily Pennsylvania
N4 2015.4.5-Smash the 'Bamboo Ceiling' of Racial Quotas-National Review
N5 2015. 5.19 The New Jews of Harvard Admissions – Asian-Americans are rebelling over evidence that they are held to a much higher standard, but elite colleges deny using quotas.-WSJ

publisher. But I do not account for numbers 3, 21, 22, 23, 28, 30, 31, and 38 because these contents do not fit into this case. For example, N23 talks about the Biden Administration dropping Yale Lawsuit, and N3 talks about Yale Law school data. As I am more concerned with the Harvard lawsuit, I will not analyze such articles. For the articles I do analyze, I will focus on

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N6 2017.4.28-Is the Ivy League's Admission Bias a 'Trade Secret'?-WSJ
N7 2017.8.9-Affirmative Action Battle Has a New Focus: Asian-Americans-NYT
N8 2017.8.9-What is Harvard hiding-WSJ
N9 2017.8.9- Harvard's discrimination against Asian Americans must end.-The Washington Post
N10 2017.12.11-The Harvard Plan That Failed Asian Americans-Harvard law review
N11 2018.4.10- Asian Americans Suing Harvard Say Admissions Files Show Discrimination-NYT
N12 2018.8.6-Harvard's education in discrimination-WSJ
N13 2019.3.27-Culture Explains Asians' Educational Success-WSJ
N14 2019.4.3-Cheating on SATS-WSJ
N15-2019.9.23-Harvard's Legacies Are Nothing to Be Proud Of-Bloomberg
N16-2019.10.4 Harvard Legal Discrimination-WSJ
N17-2019.10.8 Harvard's Asian Quotas Repeat an Ugly History-WSJ
N18-2019.10.11 Asians are doing too well – they must be stopped–Spectator
N19-2020.11.19-An attack on Asian American-WSJ
N20-2020.4.21 Asian American Discrimination at Harvard –Data Analysis
N21-2020.10.13 Amy Coney Barrett and the Ivies-WSJ
N22-2021.1.23-Biden Seeks to Define His Presidency by an Early Emphasis on Equity
N23-2021.2.4 Equity' for Asian-Americans in Practice-WSJ
N24-2021.2.23 The woke of Model Minority Myth-WSJ
N25-2021.3.7 The Boston Globe-Race-based admissions are wrong, and it's time the Supreme Court said so
N26-2021.3.26-Schools Offer Empty Words to Asians-WSJ
N27-2021.3.29 No Discrimination talk allowed-WSJ
N28-2021.4.26-A Revealing Vote on Anti-Asian Bias-WSJ
N29-2021.5.25-Justices, Please Take the Harvard Case-WSJ
N30- 2021.6.1-Stopping Racial Bias in Covid Relief-WSJ
N31-2021.6.30-The new racial discrimination-WSJ
N32-2021.7.13 A PTA purge of Asians–WSJ
N33-2021.7.21- 85% of Surveyed College Students Support Race-Blind School Admissions
N34-2021.7.27 The revolt of the unwoke-WSJ
N35- 2021.8.2-Minding the campus-Georgetown's Asian Gambit—Lies, Damned Lies and Statistics
N36- 2021.9.7 The Real Structural Racism—WSJ
N37- 2021. 11.2 Amherst Is Dropping Legacy Admissions. Why Other Universities Aren't.-Barron
N38- 2021.11.12 Students for Fair Admissions Files Appeal to U.S. Supreme Court in Students for Fair Admissions v. University of North Carolina- PRNewswire
N39-2021.12.10 Biden flips on racial bias against Asian American-NY SUN
N40-2021.12.13 Biden's 'Yes' to Racial Preferences-WSJ
N41-2021.12.21 By Ditching the SAT, Harvard Hurts Minority Students-WSJ
N42-2022.1.10 An Ugly Game of Race Preferences-WSJ
N43-2022.1.25: A chance to remove race from college admission-WSJ
N44-2022.1.25 Race, Harvard and the Supreme Court-WSJ
N45-2022. 1.29-It's Time to End Race-Based Affirmative Action-NYT
N46-2022.2.7 NYT: End Affirmative Action for Rich White Students, Too
N47-2022.2.7 Academe's Allergy to Discussing Racial Preferences Debates over affirmative action are coming — ready or not : Chronicle of higher education

the author's stance and whether their ideology or explanation of race relates to my whiteness ideology indicators. Since all these articles are selected by SFFA, they all oppose Affirmative Action, which takes race into account in admission. I categorize these articles into four categories. The first category is Number 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 16, 17, 20, 25, 26, 27, 35, 40; these articles claim Asian Americans are victims of Affirmative Action because they are discriminated against in selective college admissions. The second category is article 13, 14, 15, 29, 41, and 43, which talks about the current conditions of minorities in higher education and what kinds of education are better for minorities. The third category is articles 33, 34, 36, 37, 45, 46, and 47 ; these articles demonstrate the authors' supposition of fair admission processes, the admission process that does not favor any socioeconomic priviledged or any racial group. The fourth category is articles 18, 19, 24, 32, 40, 42, and 44 demonstrate how Asians Asians are positioned in higher education. I focused on the stance of the author in the overall sets of the article. If articles have distinctive or representative insights, I will provide additional analysis.

The first category articles are evidenced by some statistics, which they convey as facts. Articles in this category are not directly propagating whiteness ideology; they are stirring up emotion, a sentiment that is a mix of anger and compassion for the injustice of Asian Americans in higher education. This category of articles argues that higher education still implements soft quotas because of institutional stereotypes of Asian Americans. Specifically, Asian Americans have lower personal ratings, higher scores than other racial groups to get into elite colleges, and the fact that Asian enrollment has not changed as the population has increased. In addition, SFFAracializaed institutions delete student admission records because open and transparent admissions information is necessary to identify potential discrimination. The most inflammatory article is No. 2 *Admissions Lawsuit Plaintiff Pens Letters Blasting Record Purges*, which led me to a website- http://harvardnotfair.org/. On the homepage, people can see a very eye-catching slogan: “Were You Denied Admission to Harvard? It may be because you’re the wrong race”. There is also text that says: “If you have been denied admission to Harvard, we want to hear from you. Please fill out the form below. After doing so, we also encourage you to join our organization, Students for Fair Admissions, the group that has filed a lawsuit against Harvard". The SFFA stance is that race is a significant factor that becomes the decision factor for rejection of certain applicants. SFFA does not say what counts as “wrong race,” so students who were rejected may preconceive that it was their race that prevented them from admission into Harvard. The “wrong race” could be white Americans and non-white Americans, but this case focuses on Asian-Americans. SFFA steps out a traditional black/white paradigm that does not claim reverse discrimination and oppression of African Americans. If SFFA portrays whites suffering from reverse discrimination of Affirmative Action, it could be perceived as having a white supremacy bias; if SFFA portrays blacks as victims, it could easily be overturned because blacks generally have a lower overall score. They portray Asian-Americans as the new victims, the perfect victims because they have outstanding scores and extracurricular activities. So it is persuasive that race can be the only factor discriminated against Asian Americans. When the audience sees the discrimination facts from SFFA’s statistical model, they will anger and have compassion for the injustice in higher education. So the rhetoric does not directly support whiteness ideology in higher education, but SFFA builds the emotion that makes the general public believe that opposing Affirmative Action is justice. SFFA wants to use such rhetoric to elicit anger about injustice as a way to gain supporters who oppose race in the admission process. SFFA advocates fair competition in college admission and selects articles that support meritocracy. I will discuss whether these oppositions of Affirmative Action will indirectly favor whites in later paragraphs.

In the second category, some authors point out the conditions minority students experience in higher education or institutions' attitudes towards minority test scores. Some of these authors' reasons for ending Affirmative Action demonstrate whiteness ideology by not raising concerns of how to achieve better educational outcomes for minorities, which fit into the third whiteness ideology indicator. For instance, No 13 writes: "Telling blacks that white prejudice or Asian overachievement or some other external factor is primarily to blame for these outcomes may help the mayor and his party politically, but we shouldn't pretend that lowering standards helps blacks or any group advance" (Riley, 2019). In addition, No.14 writes: "But it's telling that he's angry at the test and not at the city's public schools, which he runs, for failing to provide black and Latino children with an education that would make them competitive" (Mcgurn, 2019). Using the rhetoric of concern for Black or Latino students, they argue that using lower admissions standards does nothing to improve Black or Latino performance. Such rhetoric is not wrong to assume the problem of Minorities lagging behind in k-12 education. But when they oppose racial preference in college admission, they exploit minorities as inferior who could not have good grades through themselves. In No 43, the author writes: "Students who would likely thrive at less selective institutions are struggling at elite schools, where they are admitted for aesthetic purposes" (Railey, 2022). That is to say, black students should go to a more appropriate school for them. This author's argument does not state whether the "going to a more appropriate school" represents getting blacks into shabby schools or getting into selective schools and obtaining better grades. The author also argues that Affirmative Action does not create middle-class African Americans because the 1960s already had a substantial middle class of African Americans. This is saying that the African American middle class is not a positive effect of Affirmative Action. In this article, the author does not explain why the middle class of African Americans has increased. In this category, authors do not have constructive guides to help minority students get rid of stigmas and improve scores. They convey the idea that Affirmative Action could not help minorities succeed because they still have lower grades and could not be competitive in colleges. So articles selected by SFFA neglect the racial minority students' predicaments in higher education admission, especially blacks and Latinos. The plight of minorities will not improve if critics and politicians continue to ignore the impact of ending Affirmative Action on minority enrollment and fail to consider programs that could help minorities improve their performance. This fits perfectly with the third whiteness ideology indicator-any elusive and vague rhetoric that sounds conceivable but no constructive guide to enriching racial minority students' experience in higher education. These arguments such as "we shouldn't pretend that lowering standards helps blacks or any group advance" and elite institutions may be the wrong choice for some minorities, only expressing the individuals/groups' problems. They have no structural critique of policy recommendations.

Since these authors all oppose Affirmative Action, they either support Meritocracy or support ending preference on economic advantaged students. I argue that in this category articles still prioritize white interests because they take control of the discourse. In article No.36, the writer argues that public schools ill-served African Americans, so black eighth-graders have surprisingly low proficiency in math and reading. He writes: "Is the answer to a black achievement gap to paper it over by eliminating any objective measures of achievement—and then to try to make up for it all by imposing de facto race quotas later on up the line" (Mcgurn, 2021). So, according to this author, "objective measures of achievement" is a meritocracy, a fair factor in college admissions. However, meritocracy is not fair to racial minorities and low-income students because of the definition of meritocracy and practical use of meritocracy in

the admission process prefer privileged people. In the context of higher education admission criteria, these opponents of affirmative action simply want to weigh meritocracy more heavily and then drop race in the overall rating. So they don't support meritocracy as the only criterion for admission. Mijs argues that Meritocracy is an fulfillable promise because the purpose of Meritocracy is to legitimize difference, stimulate effort, and optimize the allocation of reward (Mijs, 2015). He writes:

> "Karabel's (2005) The Chosen shows how the definition of merit at Harvard, Yale and Princeton developed throughout the twentieth century as a continuing adaptation to external forces, considered by these institutions as threats to their integrity, status, and prestige. In response to these perceived threats, the leaders of these universities tweaked and changed their admission criteria—the definition of merit—so as to be able to legitimately exclude unwanted outsiders: Catholics, (Eastern-European) Jews, nonwhites and women. Karabel spent years in the archives digging up minutes that described in detail the meetings at which such criteria were shaped and refined so as to attain the desirable outcome: Keeping these top universities the exclusive privilege of 'our kind of people.' His account of university chancellors defining merit illustrates a broader point: '[T]hose who are able to define ''merit'' will almost invariably possess more of it, and those with greater resources—cultural, economic, and social—will generally be able to ensure that the educational system will deem their children more meritorious' (Karabel 2005: 550). (Mijs, 2015).

The definition of meritocracy serves the interests of the institution and is fluid. Meritocracy's characteristics also change over time and with society as a way to allow those who are already privileged to maintain that privilege through education. Mijs also states that despite these colleges being inclusive and open to everyone, a disproportionately high number of students from high-income families. UNZ also argues that most selective colleges like IVY leagues have huge social values, and the path through these institutions is already inequitable. He says children from wealthy families can enjoy the highest quality private K-12 education, expensive private classes, and even cheat on the SAT to take shortcuts (UNZ, 2012). UNZ expected two outcomes of meritocracy. First, he says: "Consider the notorious examples of the single minded academic focus and testing-frenzy which are already sometimes found at many predominantly Asian immigrant high schools, involving endless cram-courses and massive psychological pressure" (UNZ, 2012). So he believes that a frenzy for exams can lead students to do nothing but study, which then leads to an unhealthy mental state. He also writes:

> "Also, we would expect such a system to heavily favor those students enrolled at our finest secondary schools, whose families could afford the best private tutors and cram-courses, and with parents willing to push them to expend the last ounce of their personal effort in endless, constant studying. These crucial factors, along with innate ability, are hardly distributed evenly among America's highly diverse population of over 300 million, whether along geographical, socio-economic, or ethnic lines, and the result would probably be an extremely unbalanced enrollment within the ranks of our top universities, perhaps one even more unbalanced than that of today"(UNZ 41).

So the side effect of meritocracy brings us back to the starting line of inequality where privileged people have more resources to invest in their children. Thus, meritocracy is not based on ability and talent; it's based on class privilege or wealth. So authors who support meritocracy either want more privileged students to get into the most selective colleges, or they never think about underprivileged people's plights in the competition. Furthermore, some authors do consider the

economy's adverse students' plight and try to eliminate class privilege. In No 24, the author writes: "What are these have in common is that instead of lifting achievement and giving black and Latino parents more alternatives to help their children compete, the answer is simply to take seats from Asian-Americans and reassign them by race" (Mcgurn, 2021). So he assumes that black and Latino parents could not guide their kids to achieve better grades. Besides, he also assumes that black and Latino will take Asian American seats rather than whites. The author assumes that whites applicant and non-white applicants are in the mutually exclusive pools. Only once whites reach a rough quota can the minorities compete for the remaining seats. Moreover, the absurdity of this logic lies in the fact that some authors believe that the seemingly innocent concept of meritocracy can be used to get the privileged class into the most selective institutions. Some other opinions in this category express that crowding out certain minorities can be practical to give spots to other economically disadvantaged minorities. These rhetorics not only connect to the whiteness ideology indicators but are also insulting students who worked hard to get into elite colleges.

Furthermore, some authors also argue that admissions criteria favor the wealthy more because wealthy applicants can participate in more activities that need a lot of money. They believe Affirmative Action should address economic disadvantage, not gender or race, since evidence that racial preference in admission is not an effective approach to rectify past inequalities. So, according to these authors, the legacy is the largest Affirmative Action that should be canceled to achieve equality in higher education. This eloquent rhetoric like it could be effective in reducing students who benefit from legacy privilege, but these authors do not consider the potential backlash of dropping Legacy Admissions. These commentators enter a dilemma when discussing affirmative action and minority achievement. If one opposes affirmative action, then blacks and Latinos in higher education will indeed be underrepresented because of their lower grades. However, they also have no substantive policy guidance for improving the educational attainment of Blacks and Latinos. In conclusion, meritocracy prefers students who come from higher socioeconomic backgrounds, which means the majority of whites take control of the discourse. For the ending preference on economic advantage students' reasoning, I argue that the most prestigious universities are not willing to give up huge donations, alumni resources, and the most qualified faculty members. However, even excluding faculty hiring may be full of preference, the author of The Price of Admission criticizes Harvard justification of ALDS admission which emphasizes Professors dedication to the university's smooth functioning (Golden, 2007). Golden says:

> “Faculty families that take advantage of the admission break are violating their own beliefs in meritocracy and equal opportunity not only to save on tuition but also to secure their position in America’s upper echelons. By attending elite universities where their parents teach, faculty children can network with well-placed classmates for lucrative jobs, translating their parents; educational attainments into their own wealth and status. Due to their free tuition, they aren't saddled with student loans. As alumni, they qualify their children for legacy preference-an advantage to be handed down for generations to come (Golden, 185).

So ALDS is also a legacy that has a direct advantage based on parents’ status. The author also argues that lots of Professors’ children are not qualified to go to some most prestigious colleges (Golden, 2006).

In the last category, these authors talk about Asian American positions in higher education, which either portray them as non-minority or intentionally convey racial conflict.

Article 18, 24, and 32 all argue that Asian Americans are not really considered a proper minority. For example, on this question of minority status, article 24 says: “condemn the system of white supremacy and privilege along with other people of color or be ‘banished’ from the victim group as white-adjacent” (Mcgurn, 2021). So Asian Americans are as successful as white people and no longer need Affirmative Action or even not be considered as a minority. The “minority” definition shifts from non-whites racial “minority” to the underrepresentation group in college as “minority”. I speculate that minority becomes a socially constructed definition that justifies the purpose of constructing a desired ethnic student mix in college. Furthermore, whiteness depends on nonwhite buy-in to create racial allies. For instance, article 44 writes: “A black applicant who’s in the fourth-lowest decile “has a higher chance of admission (12.8%) than an Asian American in the top decile.” In addition, article 42 says: “Tomas Jefferson high school eliminates tests to racial balancing-fewer Asian Americans and admit and make rooms for blacks and Hispanics”(The Editorial Board, 2022). For certain positions, without any consideration of whites or how they play a role here, and that it is a zero-sum game. By default, these authors argue that increased African and Hispanic American enrollment is crowding out Asians. The prerequisite of these arguments is that white are primary beneficiaries who already take the majority of seats in admission. When the audience reads these articles, irritation towards and stigmatization of other racial groups are unavoidable. Highly racialized, hard-working Asian American image and lower grade black image continue to allow minorities to see each other as imaginary enemies. In this category, institutions prioritize white interests by creating racial antagonism is the best way to consolidate whiteness.

In conclusion, the whiteness interest and whiteness ideology interact together to make white prioritization in higher education more powerful and a status quo in the discussion of Asian American position in higher education. The SFFA wants to end Affirmative Action and using meritocracy is not an equal proposition. In the absence of consideration to help minorities improve their performance in K-12 and college, elite education remains a game of privilege as long as Affirmative Action is no longer a remedial policy.

Wall Street Journal articles pertaining SFFA v Harvard

This section will examine Wall Street Journal articles towards the SFFA v Harvard decision because the Wall Street Journal represents the conservative media and has the largest circulation in the country. This section will examine Wall Street Journal articles towards the SFFA v Harvard decision. On the Wall Street Journal website, I used "Affirmative Action," "SFFA," and "Harvard" as keywords, but no articles were found on the website. So I continued to use Factiva as a search engine. First, I used "SFFA" and "Affirmative Action" as keywords, but only one Article appears. So I used "Harvard" and "Affirmative Action," and then I chose "companies-Harvard" in the left bar. There are 22 articles, but I only found four articles that are useful to my research. Most of these articles are facts of the case, restatements of some arguments of the court, plaintiff, and defendant, and other unrelated topics. For example, articles 6-11 only mentioned *the allegations from SFFA and made predictions about Harvard's response*. Article 4 *Upward Mobility: By Ditching the Sat, Harvard Hurts Minority Students* already be included in the SFFA Newsroom. In addition, Article such as *Supreme Court Nominee Ketanji Brown Jackson's Harvard Service Raises Questions for Admissions Cases; High court's next term is scheduled to hear blockbuster cases from Harvard, UNC on race-conscious admissions policies*, and *Yale University Under Federal Investigation for the use of Race in Admissions Practices Justice, Education Departments looking into allegations of discrimination against*

Asian American applicants do not fit into the thesis topic. Thus, I only examine four articles in this section to see whether they spread the whiteness ideology. I find that the facts told in these articles do not explicitly or implicitly express whiteness ideology, but their purpose of defining race can be seen in their justification of the search list and racial balancing, as well as in the attitudes of alumni or institutions towards Affirmative Action - that is, who is the most qualified one entering the most competitive elite institution.

First of all, Article 14[25] argues that the search list affects the likelihood of enrollment, and Article 17 argues that vague personal rating indirectly leads to illegal racial balance.
What these articles have in common is the view that the role of these two characteristics in admissions depends entirely on the position of Harvard, SFFA, and the courts rather than on objective statements. Article 14 argues that SFFA lawyers' internal documents say:

> "In a recent admissions year, white students in 20 underrepresented states -- which Harvard calls ‘sparse country’-- received a recruitment letter if they scored 1310 or higher out of a possible 1600 on the combined verbal and math components, according to the plaintiffs' exhibit. In all U.S. states, Asian-American women had to score at least 1350 to receive a letter, while Asian-American men had to score at least 1380. The PSAT is considered a preview of how a student may score on the SAT. Black, Hispanic and Native American high-schoolers nationally who scored at least 1100 received a letter, the plaintiffs' exhibit showed. Students who qualify for these letters are twice as likely to be admitted as students who don't qualify, according to a handbook provided to Harvard's alumni interviewers" (Hong & Korn, 2018).

Letters in this context refers to the letters sent to the students on the search list. Both Harvard and SFFA recognize that Asian Americans need higher scores to receive the letter, but they have a different understanding of how race is used here. If we apply the srandard definition of discrimination, Asian Americans suffered from prejudiced treatments based on race because they needed to get significantly higher scores than other racial groups. Harvard insists that they do not have evidence and testimony to prove the disparity, whether accidental or intentional, and insists that a search list is an advertisement tool. However, SFFA argues that Harvard's alumni interviewers handbook proves that search list students have a higher chance of admission than other students. As I discussed in the last section, Harvard must have been interested in these targeted students to send them letters. In addition, Article 14 says: "William Fitzsimmons, Harvard's admissions dean since 1986, defended the policy by saying the letters to white students in more rural states help the school recruit from areas where students may be less aware of Harvard. ‘We do everything we can to reach out to a much broader range of people,’he testified. A lawyer for the plaintiffs said a white student in a state like Nevada would receive a Harvard recruitment letter if he or she scored 1310 on the PSAT, while an Asian student in the same state with the same score wouldn't, amounting to what he called racial discrimination. Mr. Fitzsimmons[26] denied the allegation" (Hong & Korn, 2018). The author does not explain why Mr. Fitzsimmons denied the allegation and the real role of the search list. Even though I do not examine all the evidence from plaintiffs and Harvard, Harvard has a racial ideology regarding the search list debate. Marxism argues that ideology justifies power (Marx). So Harvard's racial ideology justifies how the institution's power to define what counts as discrimination in the admission process. Harvard believes that without an admissions officer acknowledging invidiously discrimination against a particular race or explicit guidelines to require higher scores

[25] Article 14: Harvard Admissions Go on Trial
[26] Mr. Fitzsimmons is Harvard Dean of Admission

from Asian Americans, it's not racial discrimination. But as long as they don't admit to doing so, the court affirmed Harvard's argument. According to López, law connected racial identities to specific characteristics and lineage and produced material circumstances of membership and exclusion that code as race (López, 2006). Thus, If anything, Harvard is excluding "Asians" from the list of "races" that can be considered subject to discrimination.

Furthermore, Article 17[27]'s author writes: "The Justice Department said Harvard's "constant monitoring and manipulation" of the racial makeup of its incoming class—at multiple stages of the admissions process—is akin to illegal racial balancing" ((Hong & Korn, 2018)). So the author believes that the vague and elusory counts as illegal racial balancing because Harvard has a desired mix of races in the first-year class. In the last section of Court opinion analysis, Harvard's defense is simple: it does not name some percentages for certain racial groups. The author claims that as long as Harvard has higher standards for Asian Americans and stereotypes on their rating, racial balancing is unconstitutional. The understanding of racial balancing is ideologically motivated because Harvard is trying to justify the current unprovable and arbitrary racial composition. In addition, the author of the article says: "Sixteen prestigious U.S. universities supported Harvard in a court filing last month and said any prohibition on considering race in admissions decisions would be an 'extraordinary intrusion' by the federal government" (Hong & Korn, 2018) . "Prohibition of 'extraordinary intrusion' by the federal government" means academic freedom institutions have decision making power in determining how race is used in their admission process. But in the "Academic Freedom" conversation in the Bakke case, no one has an explanation for the implications and limits of academic freedom. Thus, I did not find evidence of explicit and implicit whiteness ideology in Articles 14 and 17. However, Harvard and the Court have a superficial definition of "racial balancing" and "discrimination." As long as Harvard does not blatantly say it discriminates against Asians, the court finds no admissions of discrimination by Harvard.

Furthermore, Article 21[28] argues the student opinion of supporting Affirmative Action, and Article 22[29] criticizes SFFA for never challenging the admission criterion that prefers privileged students. Article 21 says: "In a brief filed earlier in the case, a group of current and prospective Harvard students pointed to research showing that while the selectivity of a school doesn't increase earnings for students as a whole, it does for black and Latino students. These students achieve higher grades and graduate at higher rates than their peers at less selective schools, the brief said" (Hong, 2017). This rhetoric illustrates the benefits that students believe affirmative action can bring minorities, but there is no opinion and judgment on this quote. Article 22 argues that SFFA v Harvard may not have a benign purpose to achieve racial equality. The author writes: "Civil rights groups and supporters of college diversity initiatives quickly criticized what they saw as a potential new Justice Department effort. An ostensible push on behalf of Asian-Americans, who are often well-represented at colleges and universities, could be an indirect way to cut back on programs that help historically disadvantaged groups, they fear"

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[27] Article 17: Justice Department Says Harvard Hurts Asian Americans' Admissions Prospects with 'Personal Rating'

[28] U.S. News: Suit Revives Scrutiny of Affirmative Action

[29] Justice Department Seeks to Hire Attorneys for Affirmative Action Review; Government Plans to Investigate Racial Bias Complaint Alleging Harvard Discriminates Against Asian Americans

((Hong & Korn, 2017). This article claims that SFFA never explicitly or implicitly expresses whiteness ideology, but this organization never challenges to end legacy and athletics. So the Civil rights groups are concerned about how non-privileged people, usually historically disadvantaged groups, will fare in admission. If race is no longer a factor in admissions, all other existing admissions criteria are likely to be biased in favor of people of high affluent social class.

In conclusion, both parties of SFFA v Harvard do not express whiteness ideology obviously and directly. The courts upheld Harvard's claimed definition of discrimination, so the definition of discrimination continues to be constructed by the institution.

New York Times Articles on SFFA v. Harvard

This section will examine New York Times articles towards the SFFA v Harvard decision. On the New York Times website, I used "Harvard Affirmative Action," "SFFA Affirmative Action," and "SFFA Harvard Affirmative Action" as keywords, but the search result was either too broad or no result. So I used UCONN ProQuest as a search engine, and the search list is pubid(11561) AND Harvard AND "students for fair admissions" AND "affirmative action" from databases New York Times. There are 50 Articles, but I only examine 23 articles that bring opinions and new things. Many articles such as 8, 9, and 12, 13, and 14 are the same article. It may be a systematic problem with the database. In addition, I did not count articles such as Article 26 *Process That Could Use Improvement, Judge Says, but Shouldn't Be Dismantled,* which summarized the positions of the plaintiff and Harvard and the Court's decision, and *Article 27, Harvard Won Key Battle Over Affirmative Action, But the War Is Not Over*, which talks about Implicit bias, diversity rationale, judgments about individuals. I will not examine Articles such as 26 and 27. Although these articles are related to my thesis, these facts or opinions have already appeared in previous news analyses or used in Court decisions. So I'm not going to repeat myself analyzing similar points. I organize these articles into four categories. The first[30] category is Article 3, 24, 36, 37, and 43, demonstrating new understandings of personal ratings and search lists. The second [31]category is articles 4, 20, 32, 35, and 45, which discuss the potential outcomes of ending Affirmative Action and its effects on college admissions. The third [32] category is

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[30] Article 3: Affirmative Action Was Never a Perfect Solution
Article 24: Enticing Letters From Harvard That Aren't Quite What They Seem
Article 36: Lead Counsel for Harvard Recalls His Own Run-Ins With Race Discrimination
Article 37: Affirmative Action Trial Begins With Details on How Harvard Treats Rural Areas
Article 43: Z-Lists, and Other Secrets of Harvard Admission

[31] Article 4: Justices Take Race-Conscious Admission Cases
Article 20: Yale Students Denounce Discrimination Accusations
Article 32: Harvard Suit Shows Edge Given to Elite In Recruiting
Article 35: The Curse of Affirmative Action
Article 45: Harvard Rates Asian-Americans As Less Likable, Plaintiffs Claim

[32]Article 15: In North Carolina, a Challenge to Affirmative Action Begins, With Some Urgency
Article 19: Princeton's Vow to Fight Racism Is Met by Investigation From Trump
Article 22: Opponents of Affirmative Action Appeal Their Case Against Harvard
Article 28: Judge Rules in Harvard's Favor In Asian-American Bias Case
Article 31: California Affirmative Action Suit Echoes Harvard Case
Article 33: Quiet? Extroverted? Harvard Says It Values Both
Article 39: The Myth of the Interchangeable Asian
Article 40: What's at Stake in a Harvard Lawsuit: Decades of Debate Over Race
Article 41: U.S. Backs a Suit Against Harvard Over Admissions

articles 15, 19, 22, 28, 31, 33, 39, 40, and 41; these articles include critics of white dominance of Harvard admission and the Court ruling. The fourth category is articles 8, 23, 25, and 29 ; these articles point to some concerns in higher education, such as diversity problems and standard test scores. I find out that all articles reveal that higher education institutions discriminate against minorities to achieve institutional goals. The lower Court also plays an ideological role to protect the Harvard admission process, which is not transparent .

First, first category articles reveal the real purpose of the Harvard search list and z list [33]and how Asian American positions are still seen as forever foreigners in the admission process. Article 3 says: "During the trial, Harvard's attorneys did not really explain why this disparity existed, but only tried to prove that it did not come out of intentional or even implicit bias from anyone inside the admissions office. What seemed to be happening was that the people writing the appraisals were routinely downgrading Asian students, judgments that Harvard apparently accepted without any further investigation" (Caspian, 2022). So as long as Harvard admissions officers are not obviously intentionally discriminating, they can arbitrarily judge Asian-Americans. Harvard also accepts and does not investigate when faced with considerable differences in ratings between races. Furthermore, Article 37 writes: "Affirmative Action Trial Begins With Details on How Harvard Treats Rural Areas. Mr. Fitzsimmons, whose demeanor remained steady, did not appear to answer directly, speaking instead about why Harvard makes special efforts to attract applicants from sparse country" (Hartocollis, 2018). So the author claims that Harvard avoids this issue. Article 24 uses terms like "seductive" and "flattering" to describe letters sent to search list students. However, the author argues that search lists only encourage students to apply rather than giving them more opportunities to be admitted. He also says that only highly selective students will be encouraged to apply to Harvard or students who have informed adults around them to help them apply to Harvard. The author also argues that Harvard writes letters to search list students to attract students, reject them, and make their school look very selective because of the lower admission rate. While this is just a marketing tool for Harvard, the author here also does not claim that Harvard can discriminate against minorities in an advertisement. However, even if Sparse Country may not negatively influence the admission process, some authors believe that "Sparse Country" represents the entrenched belief-Asian Americans are forever foreign. Article 3 says: "What he seems to be saying is that Harvard believes Asian students from sparse country are Asian before they are Arkansan or Nevadan or Alaskan and that whatever diversity benefit they might bring to the school will be based on their ethnicity, not from the state where they may have spent their whole lives. To Fitzsimmons, evidently, and by extension, the Harvard admissions office, Asian applicants are not citizens with legitimate ties to a community but are instead newcomers who should be thought of by their race" (Caspian, 2022). The author believes that Harvard Admissions still see Asian Americans as forever foreigners, which assumes or has an expectation that Asian Americans have their contribution differently than white Americans. In addition, article 43 also writes: "As late as 1976, Harvard did not recognize them as a minority group and barred them from a freshman minority orientation banquet. They had a kind of neither-nor identity, denying both the solidarity of other students of color and the social standing of white people" (Amy & Mitch, 2018). It is also said that Asians are like outsiders. Lee argues why Asian Americans are still outsiders in the US; she writes: "The suspicion of loyalty and the specter of foreignness is central to understanding the historical and present-day racializations of Asian Americans." She also says: "Closely tied to the notion of foreignness is the symbolic threat of Asian hordes taking over the

[33] Z list: Harvard grants student admission after a gap year

white nation, defining them as aliens and racial others and barring them from full and equitable inclusion in the United States" (Lee, 2016). Combined with articles 3 and 43 criticism, no matter how long Asians have lived in the United States, they are still considered foreigners. It is as if higher education will first consider the diversity that comes with a student's Asian identity while ignoring the fact that the student may have been born and raised in a sparse country of the United States. Thus, in a white nation, Asian identity brings the notion of being a foreigner, and it seems natural to be an outsider in the most selective higher education institution.

The second category article argues that ending Affirmative Action will cause Black and Latino enrollment rates to fall. However, Harvard supports Affirmative Action, which still prioritizes the white position in higher education and takes advantage of black and Latino students' representation. Many authors say that the percentage of Blacks and Latinos in elite schools would be much lower if race were not considered. But no one has explicitly asked why Harvard should apparently maintain a certain number of minorities. But diversity is in Harvard's interest to make this school appear open and inclusive. But Blacks and Latinos are not necessarily the primary beneficiaries of Affirmative Action. Bell finds out that black people are incidental or fortuitous beneficiaries only when their interests are consistent with the political demands of white elites at that time (Bell, 2005). That is to say, the current admission criteria are not designed to help minorities improve representation but rather to protect the representation of the white majority. Article 45 argues that Harvard articulately manipulates race; the author says: "University officials did concede that its 2013 internal review found that if Harvard considered only academic achievement, the Asian-American share of the class would rise to 43 percent from the actual 19 percent. After accounting for Harvard's preference for recruited athletes and legacy applicants, the proportion of whites went up, while the share of Asian-Americans fell to 31 percent. Accounting for extracurricular and personal ratings, the share of whites rose again, and Asian-Americans fell to 26 percent" (Hartocollis, 2018). Then Harvard has a solid incentive to suppress Asian American representation by using criteria that prefer whites. But Harvard claims that the number of Blacks and Latinos would be reduced if they didn't use race. So blacks and Latinos are incidental beneficiaries. Harvard also never claims whether black students could receive better education and suffer less racist retribution as Bell supposed an institution should do (Bell, 2005). Furthermore, Article 33's author also argues that Harvard constructed what kinds of personal traits are defined as fit into the institution's value. Article 33 writes: "The advice on personal ratings does not mention Asian-American bias. But the case has raised the question of whether elite colleges' preference for certain character traits in applicants such as extroversion is culturally biased" (Hartocollis, 2018). The author believes that elite colleges downgrade some traits generally more common in Asian culture. Elite colleges prefer extroversion rather than quiet, then again, it may not commonly describe Asian Americans. This cultural bias is hegemony seen as norms and unimpeachable assumptions (Finlayson, 2015). So Harvard constructed the idea that extroversion is better than quiet. So this one category of articles shows that Harvard's admissions policy still favors white students and then continues to treat black students as incidental beneficiaries. The practices of the institutions that these my articles describe are balancing the racial composition and giving prioritization to whites, which fit into the first whiteness ideology indicator.

The third category articles demonstrate whether they justify white dominance in US higher education because the Court affirmed Harvard's white dominant admission. For example, Article 19 writes: "He said racism persists at Princeton and in society "sometimes by conscious intention, but more often through unexamined assumptions and stereotypes, ignorance or

insensitivity, and the systemic legacy of past decisions and policies" (Hartocollis, 2018). So the author believes that unexamined assumptions, stereotypes, ignorance, systemic legacy are discriminatory problems in elite institutions. Unexamined assumptions and stereotypes can be found in the court analysis that Asian Americans are weaker in the activities and traits that Harvard values. Ignorance means Harvard does not care about Asian Americans' underrepresentation in legacy and ALDS. So other authors also claim that the Court plays the role of protecting Harvard's white dominant admission process. Article 22 criticizes the Judge; the author says: "The appellate brief argues that the judge gave too little weight to the statistical analysis of bias in Harvard's admissions presented by the plaintiffs, and too much credence to the testimony of Harvard's admissions officers, which the brief called 'self-serving.' So his comment is: "Two people could look at the same facts and arrive at different conclusions," the author said. "That's the judge's call to make" (Hartocollis, 2022). So the authors argue that the Judge selectively believed the testimony of Harvard's admissions officers and ignored much of the data provided by SFFA. In other words, the Court protected Harvard's perceived interests. In addition, Article 28 writes: "The Harvard case raised powerful issues of class, race, and power in American society. Critics of the university admissions process said that the white establishment was afraid of losing its dominance to another racial group. "The Supreme Court has been vague about what is O.K.," William Baude, a law professor at the University of Chicago, said. "It seems like they say it's O.K. as long as it's not too much or too blatant" (Hartocollis, 2019). This author argues that the Court is protecting Harvard's admissions system - in preserving the ability of whites to predominate at elite schools. As I said in the previous section, as long as Harvard does not blatantly discriminate against Asians, the courts will turn a blind eye. So this category argues that Harvard hides their discriminatory admissions policies and ignores the possibility of success for other minorities. Then the courts play the role of protecting Harvard's ideology. So these arguments suggest that higher education institutions' ideology fits into the first and third whiteness ideology indicator. From here, I am talking about how New York Times articles selected opinions and criticisms about minorities in higher education. It is hard to tell and discern indications of these authors' personal opinions towards Affirmative Action. I speculate that the New York Times is less ideological or just better hiding its ideology. Or they just want the general public to imagine their own expectations or justification of Affirmative Action and racial relations in higher education. I can only argue that New York Times' elusive ideological stance keeps generally readers from receiving explicit attempts to shape their understanding of Affirmative Action.

In conclusion, the New York Times article's criticism of Harvard's and Lower Court's understanding of the role of race in higher education does not go beyond the literature's understanding of the status of minorities in the United States. Asian Americans are consistently portrayed as forever foreigners, and African Americans only benefit when they are incidental beneficiaries. Both the neglect of minorities and the deliberate rationalization demonstrate the first and third indicators of whiteness ideology. Most importantly, the Court accepted Harvard's interpretation of discrimination and some admissions criteria. The Court ruling reflects the ideologies of the nation's governing elites and regulates racial behavior, which prioritizes whites' interests.

Discussion and Conclusion

In this section, I would like to summarize some commonalities and differences in Regents of the University of California v. Bakke and lower Court opinions of Students for Fair

Admissions v. Harvard. I will illustrate how the Court's understanding of race and nationality protects white individuals' interests. Second, I would like to compare the Court's interpretation of "Discrimination" and "Diversity" in two cases and their differences in talking Affirmative Action. Third, I will compare Wall Street Journal and New York Times rhetoric and strategies in relation to whiteness ideology. Finally, I argue that whiteness ideology dominates discourse about higher education admissions.

First of all, both Court decisions demonstrate the first whiteness ideology indicator. I compared Court Rulings: Bakke could not prove that he could be admitted without the quota reserved for minorities (UC Davis could not prove that Bakke would not be admitted anyway even without a special program for minorities), and the Court affirmed that Bakke could be admitted. But in SFFA v Harvard, the Court said that no SFFA member could prove that Asian American status made them discriminated against in admissions, so they should not be admitted to Harvard. In Regents of the University of California v. Bakke, the Court writes: "Since petitioner could not satisfy its burden of proving that respondent would not have been admitted even if there had been no special admissions program, he must be admitted." In SFFA v Harvard, the Court writes: "Even if there is an unwarranted disparity in the personal ratings, the Court is unable to identify any individual applicant whose admissions decision was affected and finds that the disparity in the personal ratings did not burden Asian American applicants significantly more than Harvard's race-conscious policies burdened white applicants." In both cases, Bakke and SFFA members could not prove that they could be admitted without quota or Affirmative Action. However, in the case of Regents of the University of California v. Bakke, Bakke cannot prove that he would have been accepted without a special admissions program. It is also possible that the medical school discriminated against him based on his age, but he did not challenge the age factor. But the Supreme Court still affirmed his admission. On the other hand, the lower Court in SFFA v Harvard could not determine which Asian students were not admitted because of their personality scores. But the lower Court tacitly concluded that unwarranted disparity in the personal ratings was inevitable without more evidence or investigation. The lower Court even found that whites were likely to be no less burdened by Harvard's race-conscious policies than Asian Americans. But there was no evidence that whites were discriminated against in athlete recruitment, legacy, or ALDS. So the Court's finding that race-conscious policies burden white applicants must be a tacit acknowledgement that whites would be even more disproportionately represented in higher education in the absence of race-conscious admission. The Supreme Court can interpret what is constitutional or not, and it does the ideological work. Thus, whites are the victims of lower Court and Supreme Court decisions. Accordingly, both decisions affirmed white priorities in higher education.

Furthermore, it should also be mentioned that Bakke was a white male individual plaintiff, and SFFA represented a group of anonymous Asian American plaintiffs. However, Courts seem to have taken different approaches based on what group they are dealing with. In the footnote of SFFA v Harvard, the Court explains: "Because this lawsuit concerns only allegations of discrimination against United States citizens or permanent residents, foreign applicants were removed from the data set." That is to say, elite colleges serve U.S. interests, so the court system limits its analysis of discrimination to a national context, even though universities market for diversity worldwide and welcome students from foreign countries. Hence when individuals apply to universities, they must be evaluated as part of one or more social groups. It is not a legal issue whether applicants who are not part of the United States have been discriminated against because of their Asian status. In Bakke, the Court affirmed Bakke as an individual white male. I write in

the Supreme Court decision part: "Justice Powell argued that individuals should not be held accountable for group-based outcomes and group-based preference will cause stereotypes." But Bakke belongs to the category of white male Americans. The Supreme Court affirmed Bakke's admission based on his racialized expectations rather than investigating other non-racial reasons for his denial of admission. In the Supreme Court's opinion, we can see what "justice" the highest U.S. judicial institution pursues and the common ideology they believe all Americans should agree on. Thus, the doctrine conveyed by the courts is that the social group to which a person belongs determines the decisions made by the law.

Supreme Court opinions of Regents of the University of California v. Bakke and lower Court opinions of Students for Fair Admissions v. Harvard, two prominent "reverse discrimination" Affirmative Action cases, are confusing and have commonalities in demonstrating whiteness ideology. Justice Powell portrayed some whites as innocent minorities to deny privilege in the Bakke case. Justice Powell proposed a diversity rationale, but he did not limit the scope of diversity and the conditions of how flexibly it could be used. There is no clear explanation of discrimination, and only describe this case as the "reverse discrimination" case. On the other hand, Harvard follows Justice Powell's diversity reasoning in Bakke and takes for granted that diversity is necessary for learning outcomes. The lower Court also narrowed the meaning of discrimination that only invidious discrimination against certain groups or quotas is discrimination. In the Bakke case, when the Affirmative Action policies' purpose shifted from remedy to diversity, minority students' benefits and resources could not threaten white students' interests. I emphasize the apparent inconsistencies in Harvard's testimony because the Court accepts some arbitrary racial stereotypes and protects privileged status such as athletic, legacy, and ALDS. In the analysis of Bakke's case, I speculate that there will be more and more appeals of white claims of "reverse discrimination" because dissenting opinion actually plays a counterproductive role that increasingly number of appeals of white claims of “reverse discrimination.” SFFA v Harvard challenged racial-based Affirmative Action rather than other privileged admission criteria, which still ignores underprivileged racial minority students' experience in higher education. Thus, both cases have a sustainable and evident goals-whiteness ideology, and privilege should dominate US racial relations continuously.

In addition to Court analysis, mass media rhetoric and strategies also demonstrate whiteness ideology. In the New York Times articles analysis, all the articles regarding both cases do not explicitly propagate the first whiteness ideology because supporting Affirmative Action is progressive and inclusive. But to varying degrees, these articles reflect the interests of whites whom the ideology necessitates be prioritized. Most of the articles accept the legitimization of diversity and the benefits for all students and institutions. In the articles regarding Regents of the University of California v. Bakke, the debate revolves around how courts should interpret colorblindness and discrimination and whether diversity or remedy is the end of Affirmative Action. In Students for Fair Admissions v. Harvard, none of the authors questioned the diversity rationale because the remedial rationale is no longer the purpose of Affirmative Action, following the Court's decisions on Affirmative Action. Regarding Bakke's case, the authors do not mention institutions' explicit, obvious, and sustainable goals. But in SFFA v Harvard, some authors argue that elite universities like Harvard have explicit, obvious, and sustainable goals to keep prioritizing legacy, athletes, and ALDS, which are white predominant. Besides, Harvard also uses some marketing tools such as search lists to maintain the reputation of having a low admission rate. However, there is no updated investigation and evidence on whether the search list is suspected of discrimination and whether it impacts the admission outcomes. Since the

Bakke case did not involve Asian Americans, there was no debate over Asian American position in Affirmative Action. But in SFFA v Harvard, some authors argue that Harvard racializes Asian Americans as forever foreign whose contributions must be understood as "Asian." They also say that blacks and Latinos are incidental beneficiaries in Harvard admission because by raising the numbers of some blacks and Latinos, Harvard can suppress the numbers of Asian Americans. Of course, the prerequisite for doing so is that whites hold the majority of seats, and minorities need to compete for the remaining seats. Most importantly, as a mass media, New York Times articles do not discuss how institutions can improve minority experience in higher education. So the ignorance of minority predicaments and disparity in K-12 education are the commonalities of the New York Times articles.

In the analysis of the Wall Street Journal articles analysis, SFFA selected articles that all oppose Affirmative Action. Since there are commonalities in these two cases, I will summarize different opinions. Regarding Regents of the University of California v. Bakke, the author argues there strategies to end Affirmative Action:

1. Vague rhetoric in the Supreme Court decision increases the controversy over Affirmative Action and encourages more litigation that pressures Justices to oppose Affirmative Action.
2. Some authors explicitly argue that minority students perform less well than white students and encourage them to less selective universities.
3. Some authors believe that Affirmative Action forces minority students to fulfill the expectations of their racial group and their contributions to diversity based on race.

The SFFA newsroom proposes meritocracy and only chooses a few articles that oppose admission privilege, which still cannot achieve equality in higher education. Most importantly, SFFA selected articles with a highly racialized, hard-working Asian American image and lower grade black image, which describe admission seats as a zero-sum game. The competition between Asian Americans and other races implies that whites must be in the majority in higher education. Wall Street Journal articles regarding SFFA do not explicitly propagate whiteness ideology but never try to argue racial equality in higher education. Still, all the articles argue that the definition of "racial balancing" and "discrimination" are institutions constructed, and admission policies always prefer socioeconomically privileged applicants. In sum, while conservative arguments and critiques of opposition to Affirmative Action are very diverse, both cases say that existing confusing Affirmative Action decisions make racial ideology more intensified.

In this paper, I acknowledge the limitations and weaknesses of my research design. I cannot make a certain statement about causal inference. I have no way of knowing whether the Supreme Court's decision influenced the media's coverage of Affirmative Action, whether the media's coverage of Affirmative Action influenced the Supreme Court's consideration of individual rights, or whether it was an intricate interplay of the two institutions. I cannot tell what effect the texts have on the audience because I can only tell what the authors/text is trying to do rather than how critically its readers consumed them. Furthermore, I cannot tell what factors influenced the Supreme Court decision; for example, I could not show how the goal of combating communism influenced the Brown decision (Bell, 2005). I cannot tell international factors, domestic factors, the racial climate in higher education, etc., that may directly or indirectly affect the Supreme Court opinions.

In conclusion, U.S. racial policy and relations are not immutable, and there are some similarities between the decisions in the two cases despite the roughly four decades between

them. From my analysis of how the legal privilege of whiteness permeates policymaking and perceptions of race by comparing and contrasting the Supreme Court opinions of Regents of the University of California v. Bakke and lower Court opinions of Students for Fair Admissions v. Harvard, as well as the text of prominent news from the New York Times and Wall Street Journal on Bakke and SFFA, I find that all the resources I examine demonstrate the presence of whiteness ideology, whether explicitly or implicitly. Finally, I argue that whiteness ideology dominates discourse about higher education admissions. The most important thing is that Courts always justify white dominance in higher education by doing ideological work. Finally, for future research, developing new non-ideological understandings of Affirmative Action in higher education would be an exciting aim for this research field.

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