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# OPINION



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## Students of Color Belong in Top Schools

For us, the civil rights struggle continues

BY IVÁN  
ESPINOZA-MADRIGAL

Black people don't belong in top schools - that's what I heard from Supreme Court Justice Antonin Scalia during oral argument in the high-profile Fisher v. University of Texas case. As a gay Latino who arrived in this country when I was nine years old and who was raised by a single mother in a low-income immigrant community, I've heard similar disparaging comments throughout my academic and professional life. Never mind that I graduated at the top of my class from high school, college and law school.

As a civil rights attorney, I know that Justice Scalia is wrong, and I helped to prove it in a Supreme Court brief filed by my organization, the Lawyers' Committee for Civil Rights and Economic Justice, on behalf of leading scholars who have, through rigorous empirical studies, debunked the so-called "mismatch theory."



This is the idea, voiced by Justice Scalia, that affirmative action is harmful to students of color because they don't belong in top schools. This idea is not just legally and scientifically wrong, it's also misguided and dangerous.

Justice Scalia essentially said that black students - and by extension other people of color - are inherently less qualified and capable than whites. People who look like me are, somehow, less able to withstand rigorous academic pressure. Conversely, Justice Scalia implies that white students are inherently more able, more capable, and more deserving.

This racial dichotomy and hierarchy - rooted in purported inherent differences between races - helped legitimize slavery and segregation. Under this view of race, it shouldn't even be separate but equal - it should be separate and unequal. These preconceptions and stereotypes are precisely what civil rights attorneys have been fighting even before Brown v. Board of Education. It's what my organization fought for when we desegregated Boston's public schools, and it's what we continue to fight for today.

In the aftermath of police violence in Ferguson, Mo., students of all races in colleges across the country have been calling for greater diversity and inclusion. The natural extension of Justice Scalia's comments on race is that the experiences of students of color on campus don't matter and that their alienation and marginalization on campus is justified. After all, if students of color don't belong on campus, then why should they be made to feel welcome?

The notions underlying the so-called "mismatch theory" are paternalistic. They are racism masked as benevolence. Proponents of such theories pretend to be looking out for the best interests of students of color. In reality, they are taking away our choice and our capacity to make our own decisions.

A logical extension of Justice Scalia's argument is that professionals of color - the presumed beneficiaries of affirmative action - are unqualified. In arguing that students of color don't belong in top schools, Justice Scalia suggests that neither Justice Clarence Thomas nor Justice Sonia Sotomayor should have attended Yale Law School, and that they should not be his peers. But Justice Scalia - and opponents of di-

iversity - don't call into question the qualifications of the children of wealthy alumni who are admitted under legacy admissions programs. There is no national movement to send them to "slower" schools. This creates a strong impression that certain colleges - and the opportunities they afford - should be exclusively reserved for whites.

I believe strongly and unequivocally that colleges and universities must retain the ability to consider race as one of many factors in creating a diverse student body. And I know that, when students from different walks of life learn with and from each other, they are better prepared for success in our increasingly diverse and interconnected world. The benefits that flow from diversity don't change based on the caliber of the school. We should be promoting diversity, not quashing it.

So let's set the record straight, people of color belong in all schools, including top colleges, and we belong on the Supreme Court, in corporate boardrooms, and wherever else opportunity exists. For all of us, the civil rights struggle continues.

*Iván Espinoza-Madrigal is the executive director of the Lawyers' Committee for Civil Rights and Economic Justice.*

## Supreme Court Rehearing Affirmative Action

Here we go again!

BY KEVIN L. ANTOINE

Every few years the U.S. Supreme revisits the issue of admitting African Americans and other under-represented groups into college.

This issue goes by many names, equal opportunity, affirmative action, diversity, inclusion, and most recently holistic admission.

The court has let stand the practice of colleges using many factors when reviewing the credentials of students applying for admission. These factors include, gender, geography, family income, disability, gender identity, LGBT, military status, language spoken at home and race just to name some of them.

However the only factor that ends up in a lawsuit is when a white applicant is denied admission over race, more specifically, the race of an African American



student that was admitted. I cannot think of any affirmative action lawsuits where a white applicant that was denied admission because the college admitted another student who was a military veteran, or gender identity, or disability.

No other population in America is so heavily burdened with the task of enjoying life, liberty, and the pursuit of happiness than African Americans. This historical burden stems all the way back to 1776, the birth of the nation when white colonists won their freedom from Great Britain, but denied freedom to their African slaves. In 1807 America abolished the international slave trade, however the institution of slavery continued in America for another 58 years. It took a Civil War, passage of the 13th amendment, and the assassination of a president to end slavery in America.

After passage of the 13th Amendment, the newly freed

population, though free, could not read or write, had no schools, housing or healthcare. The great emancipator Abraham Lincoln established the Freedmen's Bureau, the first federal government office with oversight of education, housing, employment and healthcare. These programs exist today as agencies in the executive branch of the federal government (The Departments of Education, Housing, Labor, Health and Human Services). Though first established to help African Americans, these federal agencies now assist all Americans.

By 1876, reconstruction ended with the election of Rutherford B Hayes as president. Hayes granted former confederates the right to hold political offices in the south. In short order southern states began to turn back the clock on all of the equal opportunities afforded African Americans under reconstruction. Sound familiar?

Here we go again!  
One hundred years after President Lincoln issued the Eman-

ipation Proclamation, President Kennedy sent his civil rights bill to the Congress. It took a civil rights movement and the assassination of a president to pass the Civil Rights Act of 1964. Sound familiar?

Here we go again!  
In the Fisher v. the University of Texas Law School at Austin case, the Supreme Court will decide if race can continue to be one of many factors colleges can consider when reviewing student applications for admissions. Here's the rub. For centuries in America, the law made it unlawful for a "whole race of people," African Americans, to go to school, to learn, to read, to write, add and subtract. Now once again the law will decide whether race is a factor for keeping African Americans from obtaining a college education.

Here we go again!  
*Kevin L. Antoine, JD is a college professor and legislative director for the American Association for Access Equity and Diversity.*

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