The SFFA v. Harvard Trojan Horse Admissions Lawsuit

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ABSTRACT

Affirmative-action-hostile admissions lawsuits are modern Trojan horses. The SFFA v. Harvard/UNC case—Students for Fair Admissions, Inc. v. President & Fellows of Harvard College and Students for Fair Admissions, Inc. v. University of North Carolina, et. al., decided jointly—is the most effective Trojan horse admissions lawsuit to date. Constructed to have the distractingly appealing exterior façade of a lawsuit seeking greater fairness in college admissions, the SFFA v. Harvard/UNC case is best understood as a deception-driven battle tactic used by forces waging a multi-decade war against the major legislative victories of America’s Civil Rights Movement, specifically Title VI and Title VII of the Civil Rights Act of 1964. Although the Court’s ruling in SFFA v. Harvard/UNC did not accomplish the legal goal of making race affirmative action categorically unconstitutional, the case conceals and perpetuates a moral falsehood with the ideological power to destroy race-inclusion-focused civil rights laws.

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INTRODUCTION

“Despite the warnings of Laocoön and Cassandra, the horse was taken inside the city gates.”1

I take this opportunity to reissue and refine my warning that affirmative-action-hostile admissions lawsuits are modern Trojan horses.2 The SFFA v. Harvard/UNC case—Students for Fair Admissions, Inc. v. President & Fellows of Harvard College and Students for Fair Admissions, Inc. v. University of North Carolina, et al. decided jointly3—is the most effective Trojan horse admissions lawsuit to date.4 Constructed to have the distractingly appealing exterior façade of a lawsuit seeking greater fairness in college admissions, the SFFA v. Harvard/UNC case is best understood as a deception-driven battle tactic used by forces waging a multi-decade war against the major legislative victories of America’s 1960s Civil Rights

1. Trojan Horse, ENCYC. BRITANNICA (Nov. 16, 2023), https://www.britannica.com/topic/Trojan-horse [https://perma.cc/4MV5-5E84].
Movement, specifically Title VI and Title VII of the Civil Rights Act of 1964.5 Here, I name a contemporary force seeking to entrench white predominance by employing Trojan horse admissions cases like SFFA v. Harvard and explain that it has a morality-shifting agenda as well as an anti-race-inclusion legal agenda. Though the forces of this Repression army are, even after their win in the SFFA v. Harvard/UNC case, still short of their legal goal6 of making race affirmative action categorically

5. Title VI, 42 U.S.C. § 2000d et seq., and Title VII, 42 U.S.C. § 2000e et seq., are federal laws that incentivize and require the fair inclusion of all racial groups, including African Americans and other non-Whites, in federally funded programs such as those in colleges, universities, and workplaces. However, Title VII only applies to workplaces with fifteen or more employees. See 42 U.S.C. § 2000e (b) (2018). “Title VI rests on the power of Congress to fix the terms on which federal funds are made available’ to prohibit entities that receive federal funds from engaging in discrimination.” Kimberly West-Faulcon, The River Runs Dry: When Title VI Trumps State Anti-Affirmative Action Laws, 157 U. PENN. L. REV. 1075, 1122 (2009).

unconstitutional, they have successfully used the case to perpetuate a moral falsehood with the ideological power to destroy race-inclusion-focused civil rights laws.

This Article makes two identifications. To do so, it draws on the story, as told in Virgil’s *The Aeneid*, of the Greek army’s eschewing of the strategy of a traditional frontal attack on the city of Troy in favor of a covert alternative—the lie-based battle tactic of pretending to give up the ten-year war by gifting a wooden horse full of hidden Greek soldiers who exit in the night and open the gates of Troy to the full assemblage of the Greek army. Part I employs the term and idea of “Repression army” to describe individuals and groups who are marshaling independent and government power to repress the human, citizenship, and equitable inclusion rights of African Americans and other persons of color. It draws from

7. See infra Section II.B. (explaining that the Supreme Court’s ruling in *SFFA v. Harvard/UNC* stops short of overruling precedent applicable to diversity-justified affirmative action in college admissions).


9. Id. at 35–70 (Book Two).

10. This Article likewise uses the terms “Repression forces,” “First Repression,” “Second Repression,” “Repressors,” “First Repressors,” “Second Repressors,” “second-era repressors,” and first-era repressors” as part of the lexicon it suggests.

11. It is not the object of this Article to precisely define the membership of the Repression army it names. Instead, I use the Repression army lexicon to connect five centuries of subjugation and repression of the human rights and dignity of people of color, particularly African Americans—the repression of the human and citizenship rights of African Americans and other non-Whites starting in 1514 and continuing to today, in 2024. As I conceive it, the Repression army dates back to individuals sanctioned by European governments to traffic and enslave persons of color in what is present-day America. See Olivia B. Waxman, *The First Africans in Virginia Landed in 1619. It Was a Turning Point for Slavery in American History—But Not the Beginning*, Time (Aug. 20, 2019), https://time.com/5653369/august-1619-jamestown-history/ (explaining the incorrectness of describing the people from the port city of Luanda, now the capital of the present-day African country of Angola, who were captured in a war and trafficked by the government of Portugal as “the first Africans” to land in North America). African captives were forced onto European ships for over 100 years before 1619 when paramilitary privateers commissioned by England
observations from my 2015 opinion article Why Abigail Fisher’s Lawsuit Is a Modern Day Trojan Horse and a 2014 Harper’s Magazine article by Professor Randall Kennedy\textsuperscript{12} to situate Trojan horse admissions cases within the long historical arc over the many centuries that America’s Repression army has employed varied tactics to beat back social, political, educational, and economic racial justice and inclusion of African Americans and other non-Whites.

Part II examines the contents of the most recent Trojan horse lawsuit executed by the Repression army—SFFA v. Harvard/UNC. It identifies the content hidden inside the lawsuit as: (1) the centuries-old falsehood that any degree of diminishment of the historically longstanding dominance of Whites as a racial group is racism against that group and (2) a strategy to install a first-of-its-kind legal regime under which it would become categorically illegal to diminish white racial dominance to any degree. In addition, this Part then examines the Supreme Court’s adoption of the immoral lie about racism pushed by the Repression army and its blindness to historical and present-day overwhelming statistical white predominance at Harvard and UNC-Chapel Hill. The Article’s conclusion contemplates the stakes of failure to mount a counteroffensive against the dangerous content exiting the SFFA v. Harvard/UNC Trojan horse lawsuit.

I. REPRESSION ARMY’S USE OF TROJAN HORSE ADMISSIONS CASES

Nine years ago, I wrote to warn that the Repression army’s next target for attack would be Title VII of the Civil Rights Act of 1964,\textsuperscript{13} as amended by the Civil Rights Act of 1991.\textsuperscript{14} Today, less than a year after the Supreme Court’s ruling in SFFA v. Harvard/UNC, those predicted widespread legal attacks designed to destroy and degrade Title VII federal

\textsuperscript{12} See Randall Kennedy, The Civil Rights Act’s Unsung Victory, HARPER’S MAG. (June 2014), https://harpers.org/archive/2014/06/the-civil-rights-acts-unsung-victory/ [https://perma.cc/NQ4Q-75ZZ] ("From 1514 to 1866, more than 12.5 million African captives were forced onto about 40,000 European ships, the Trans-Atlantic Slave Trade Database estimates.").


\textsuperscript{14} Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (codified in scattered sections of 2, 16, and 42 U.S.C.); 42 U.S.C. § 2000e (2018); see West-Faulcon, supra note 2 ("Once Blum’s group is done suing colleges, it will be one step closer to getting the Court to strike down other civil rights laws in areas like employment.").
antidiscrimination law are underway. The success of the SFFA v. Harvard/UNC lawsuit as a delivery mechanism for the immoral lie that combattting racism is racist warrants explicit interrogation. I offer that here by revisiting observations I made when Fisher v. University of Texas at Austin, not SFFA v. Harvard/UNC, was the most prominent Trojan horse admissions lawsuit in national headlines.

This Part employs my 2015 opinion article examining the Trojan-horse nature of the Fisher v. Texas admissions case, observations by Professor Randall Kennedy in his 2014 magazine article The Civil Rights Act’s Unsung Victory that, by 1964, opponents of race inclusion deployed

15. America First Legal is the forefront of these attacks against inclusion-motivated attention to race employed by companies with predominantly White workforces, including BlackRock, Inc., NASCAR, Meta Platforms, Inc., the FBI, and Progressive Insurance. See, e.g., Emily Birbaum, Trump Allies Attack Corporate ‘Bigotry’ Against White Men, PHILA. TRIB. (Dec. 11, 2023), https://www.phillytrib.com/trump-allies-attack-corporate-bigotry-against-white-men/article_7582e8bb-c725-5196-87c2-ba6d45511dd13.html [https://perma.cc/URD5-ZTRV] (noting that NASCAR is “a largely White sport where Confederate flags were prevalent until they were banned in 2020”), “Edward Blum, the activist funding legal challenges to affirmative action, grants for Black women entrepreneurs, and fellowship programs for law firm associates, has been pursuing this mission for over 30 years.” Joelle Emerson, The Anti-DEI Movement Has Gone from Fringe to Mainstream: Here’s What That Means for Corporate America, FORTUNE (Jan. 4, 2024), https://fortune.com/2024/01/04/anti-dei-movement-fringe-mainstream-corporate-america-diversity-equity-inclusion-meaning-joelle-emerson/ [https://perma.cc/LUQ5-BCQZ] (explaining that “anti-diversity activists have been working towards this moment for decades”); see also id. (“A nonprofit founded by Stephen Miller, the architect of Trump’s Muslim ban and anti-diversity executive order, has filed at least a dozen complaints with the U.S. Equal Employment Opportunity Commission targeting companies’ DEI efforts, from hiring programs to carrying merchandise that celebrates Pride.”); Nate Raymond, Conservative Activist Behind US Affirmative Action Cases Sues Venture Capital Fund, REUTERS (Aug. 2, 2023), https://www.reuters.com/legal/conservative-activist-behind-us-affirmative-action-cases-sues-venture-capital-fund-2023-08-02/ (describing anti-diversity lawsuit alleging venture capital fund called Fearless Fund violated an 1866 civil rights law enacted to protect the rights of African Americans and other non-Whites to enter private contracts, 42 U.S.C. § 1881, which declares that “all persons in the United States” have “the same right” to enter private contracts “as is enjoyed by white citizens”). Since June 29, 2023, the date of the Supreme Court ruling in SFFA v. Harvard/UNC, the founder and directing officer president of the anti-affirmative-action organization, Students for Fair Admissions (SFFA), who was the sole and organizational plaintiff suing Harvard and UNC in SFFA v. Harvard/UNC is now also founder and president of a newly created anti-racial-inclusion-in-employment-focused not-for-profit 501(c)(3) organization called “the American Alliance for Equal Rights” (AAER). Since the Supreme Court’s ruling in SFFA’s favor in 2023 in SFFA v. Harvard/UNC, Blum increasingly explicitly articulates that the litigation and policy goals of the numerous organizations for which he is the named founder are focused on ending inclusion-motivated attention to race in U.S. workplaces and industries. See, e.g., Lulu Garcia-Navarro, He Worked for Years to Overturn Affirmative Action and Finally Won. He’s Not Done, N.Y. TIMES (July 8, 2023), https://www.nytimes.com/2023/07/08/us/edward-blum-affirmative-action-race.html [https://perma.cc/QL29-YY9X] (quoting Blum answering a question about what future legal challenges he might have his “eye on” as inclusion-motivated racial DEI policies “in the employment arena, contracting arena, [and] internships”).

18. See West-Faulcon, supra note 2.
The essence of calling a tactic a “Trojan horse” is identifying the method of attack as having contents—or true intents—that are concealed. In Virgil’s epic tale, the ruse of the original Trojan horse is two-fold. First, a warrior carpenter builds an enticingly beautiful “mighty [w]ooden [h]orse” in which dozens of Greek warriors in full battle gear could be hidden. Second, the Greeks pretend to give up the battle—to desert the war—and sail away to a nearby island. The Greek warrior named Sinon plays the pivotal role of telling two intricate lies to the Trojans—that Sinon had switched sides in the war and that the Greeks had given up the war, that neither [Greek war heroes] Tydides nor Larissean Achilles, nor ten years, nor a thousand ships, [c]ould ever bring to [its] knees was defeated “by the guile and art of perjured Sinon, . . . [u]nder compulsion of his tricks and tears”).


20. See Virgil, supra note 8, at 44 (observing the Greek army defeated the Trojans with Sinon’s lie-filled story—the Trojan army “whom neither [Greek war heroes] Tydides nor Larissean Achilles, nor ten years, nor a thousand ships, [c]ould ever bring to [its] knees” was defeated “by the guile and art of perjured Sinon, . . . [u]nder compulsion of his tricks and tears”).

21. See infra Section I.B, notes 108–127 and accompanying text (describing the central intellectual and policy strategy role of Clint Bolick in the contemporary Repression army’s attack on inclusion-motivated race attentive laws and policies as analogous to the role of the Greek, Odysseus, who conceived of the Trojan horse plan for the Greeks to get inside the walled city of Troy).

22. See infra notes 168–178 and accompanying text (describing the organizations founded by Edward Blum).

and in so doing, abandoned the wooden horse—a gift offering that Sinon promised would bring blessings to the Trojans from the goddess Athena if they brought it into their city gates.\textsuperscript{24}

Troy’s soldiers take in the gift against the warnings of Laocoön and Cassandra to be “afraid of Greeks[,] even those bearing gifts,” and not to bring the wooden horse into the city gates.\textsuperscript{25} The Trojans are so effectively taken in by the Greek army’s two-pronged deception tactic that they knock off the upper walls of their own city gates to bring the enticing container into Troy.\textsuperscript{26} The hidden “Greek soldiers descend from the [wooden] horse’s belly after dark,” slay the Trojan guards, and open the gates from within to give entry to the rest of the Greek army that had previously pretended to give up but has now return from the island where they had been waiting.\textsuperscript{27} In the end, the Greeks destroy and overtake the city of Troy, “slaughter[] or enslave[]” its people, and win the decade-long war.\textsuperscript{28}

In an article published in December 2015, on the same day the U.S. Supreme Court heard oral arguments in \textit{Fisher v. University of Texas at Austin},\textsuperscript{29} I use the Trojan horse analogy to forewarn that a theory for striking down important “provisions of the Civil Rights Act of 1964” was “hidden inside” the lawsuit.\textsuperscript{30} But, I choose to begin with an acknowledgment of the centrality of obfuscation and disinformation in the Repression army’s use of admissions lawsuits. Specifically, I explain how the Repression army, like the Greek army, wages war—in the case of the former, against the legislative and moral victories of the 1960s Civil Rights Movement—by hiding dangerous contents inside a sham gift with an enticingly appealing façade.

I start, “[t]oday, the Supreme Court will hear arguments in yet another racial affirmative action case involving college admissions.”\textsuperscript{31} Next,

\begin{itemize}
\item 24. See Colin Quartermain, \textit{Sinon in Greek Mythology}, \textsc{Greek Legends \\& Myths} (Nov. 7, 2021), https://www.greeklegendsandmyths.com/sinon.html [https://perma.cc/HUH9-XEQ9]. Some accounts reference Minerva instead of Athena. See, e.g., \textsc{Virgil}, supra note 8, at 43–44 (recounting Sinon’s lie that doom would descend on the Greeks if the offering for Minerva could ascend into Troy’s citadel). Minerva is the name Romans gave the Greek goodness Athena. \textit{See Minerva, \textsc{Britannica}}, https://www.britannica.com/topic/Minerva-Roman-goddess [https://perma.cc/5X64-TN93].
\item 26. See Iliffe, supra note 23.
\item 27. Alfred, supra note 25.
\item 28. Mark Cartwright, \textit{Trojan War}, \textsc{WORLD HIST. ENCYC.} (Mar. 22, 2018), https://www.worldhistory.org/Trojan_War [https://perma.cc/ECH2-PEKH] (“The final and decisive action was . . . the idea of the wooden horse.”).
\item 29. 579 U.S. 365 (2016).
\item 30. See West-Faulcon, supra note 2.
\item 31. \textit{Id.}\end{itemize}
I acknowledge how carefully Trojan horse admissions lawsuits are constructed to hide their dangerous contents and to also be morally enticing when I observe:

It seems perfectly reasonable for non-lawyers to wonder why these types of cases—cases filed by rejected white applicants alleging a college violated the Constitution by considering race—appear before the Supreme Court so regularly. If I did not teach and write about these cases, I would be left to think that racism against white college applicants is rampant. Why else would the U.S. Supreme Court, the highest court in the land, be hearing so many of these cases? Why else, in the case that will be argued today, would the Supreme Court hear the same case twice?

If I did not know all of the specific details of the lawsuit, I would presume that the plaintiff in the case, Abigail Fisher, must have been wronged in some way—why else would she find lawyers and subject herself to the national attention (and ridicule over her less-than-stellar grades and SAT score) that she has endured as people across the nation have debated whether she was indeed qualified to attend the University of Texas at Austin when she applied as a high school student for admission back in 2008?

Then, my opinion article explains that “[a]ctually, once you know the origins of the Fisher v. Texas case, you realize the agenda afoot is

32. *Id.* (referring to Trojan horse admissions lawsuits dating back to *Regents of California v. Bakke*, 438 U.S. 265 (1978) (complaint filed against the University of California at Davis School of Medicine in 1974 with Supreme Court striking down the school’s policy but holding that diversity-justification for race affirmative action is “compelling”), which was followed by *Grutter v. Bollinger*, 539 U.S. 306 (2003) (complaint filed against the University of Michigan law school in 1997 with Supreme Court upholding law school’s race affirmative action policy as satisfying both the “means” and “end/interests” prongs of “strict scrutiny” legal test), *Gratz v. Bollinger*, 539 U.S. 244, 276, n.23 (2003) (complaint filed against the University of Michigan—that state’s most selective flagship undergraduate university—in 1997 with Supreme Court striking down use of race in undergraduate admission policy as failing the “means” prong of “strict scrutiny” legal test), *Fisher v. University of Texas at Austin*, 570 U.S. 297 (2013) (filed in 2008 against the most selective flagship undergraduate campus in the state’s university system with Supreme Court remanding the case in *Fisher I*, 570 U.S. 297 (2013) (*Fisher I*), for more stringent application of “strict scrutiny” test and upholding the use of race by UT Austin as satisfying both the “means” and “end/interests” prongs of “strict scrutiny” test when Supreme Court granted certiorari a second time in *Fisher II*, 579 U.S. 365 (2016) (*Fisher II*).

33. West-Faulcon, *supra* note 2 (referring to the U.S. Supreme Court’s decision to grant certiorari twice in *Fisher v. University of Texas at Austin*).

34. *Id.* (referring to *Fisher I* and *Fisher II*).

35. Without drawing the explicit analogy between Edward Blum’s role in Trojan horse admissions cases and Sinon’s role in helping the Greeks defeat the Trojan army that I make in this Article, see *infra* Section I.C., my opinion article highlights the multi-decade role that Blum has played in both Trojan horse admissions cases and cases that degrade and destroy voting rights for people of color previously protected by laws the Repression army has consistently attacked. *See id.* I describe Edward
more like the Greek mythology story of the Trojan horse. I begin my identification of the dangerous contents hidden inside Trojan horse admissions lawsuits by comparing it to the now-successful multi-decade effort to overturn Roe v. Wade and Planned Parenthood of Southeastern Pennsylvania v. Casey, hidden in cases like Dobbs v. Jackson Women’s Health Organization and connecting it to the legal theory relied upon to strike down a key provision of the Voting Rights Act of 1965 when I state:

Unbeknownst to many Americans, there has been a multi-decade effort, similar to the effort to overturn Roe v. Wade, to reverse various modern American civil rights laws—in particular, laws relied upon by people of color and women to challenge unconscious and subtle discrimination in employment. While the success of the theory seemed far-fetched when I first started teaching constitutional law 10 years ago, it is much more plausible now. Today, there are four justices on the Supreme Court who already subscribe to the theory that anti-discrimination efforts constitute unfair racial favoritism. In fact, the crux of the theory was used to strike down a key provision of the Voting Rights Act of 1965 a few years ago. . . . The problem with this theory is that civil rights laws consider race, yet they are clearly not racial favoritism.

Blum as a “person with a long-term agenda to overturn civil rights laws” and known for his attacks on voting rights and on affirmative action in Harvard and UNC-Chapel Hill admissions by including the following details:

The truth is that the plaintiffs (including Abigail Fisher and the plaintiff in the case that succeeded in eliminating a key provision of the Voting Rights Act), the lawyers, and the funding for these cases were all identified and matched by the same person with a long-term agenda to overturn civil rights laws. It is that person—Edward Blum, director of an organization he founded and named “the Project on Fair Representation”—who conceived and backed Shelby County v. Holder (the voting case) as well as Evenwel v. Abbott (another anti-civil rights voting case argued yesterday in the Supreme Court) and who is also behind the Fisher lawsuit. He is on record as saying he searched for over two and a half years to find Abigail Fisher so he could go after UT Austin. He also recently funded lawsuits against Harvard and UNC Chapel Hill after searching for rejected Asian American[s] to become plaintiffs.

Id.

36. Id.
41. In the nine years since I wrote this opinion article, that number of justices who ascribe to this view has risen to six. See infra Section II.B. (describing the opinion of the six-justice majority in SFFA v. Harvard/UNC as accepting the falsehood that inclusion-motivated attention to race is racist).
42. West-Faulcon, supra note 2.
Prior to identifying the dangerous contents with greater specificity, I used the Trojan horse analogy to highlight that admissions cases like the Fisher case argued before the Supreme Court that day were “carefully orchestrated” to appear to have a morally virtuous goal. I explain that the beautifully crafted wooden horse, the Fisher lawsuit, like the other Trojan horse admissions cases that preceded and would follow it, is a fake gift with hidden dangerous contents. To illustrate the Trojan horse nature of these admissions lawsuits, I identify what they purport to “gift” but are not constructed to and never do deliver—greater fairness in college admissions. But, the enticing exterior façade of college admissions cases as engines of fairness purposefully obscures the historical shifts and changes in college admissions that are the real reasons the probability of exceedingly qualified high school students gaining admission to hyper-selective institutions (like Harvard) and to the highly selective campuses of state university systems (like the University of Texas, University of North Carolina, and University of California) has been getting lower and lower each year since the 1990s.

The purveyors of Trojan horse admissions lawsuits use a variety of scapegoating and distraction techniques to feed the misimpression that affirmative action in favor of African Americans and Latinos is to blame when a student with excellent grades and test scores fails to gain admission to their first choice highly- or hyper-selective college:

These cases are guised as a gift that salves the hurt of disappointed parents of high school seniors who do not get one of the increasingly coveted spots at the handful of very selective universities they think will ensure their children success in the challenging “new economy.”

[But.] [t]his particular Trojan horse is not, of course, a gift for a goddess—it is the gift of a scapegoat in a now-familiar form. Again, the scapegoat is the handful of African-American students who are admitted to highly selective universities. It is the black students who have been in the nation’s headlines for the past several months—the small number of black students at schools like Yale, Harvard Law School, and the most selective public universities like the University of Texas at Austin.

The gift is a supposed explanation for why so few poor whites attend these elite colleges or, if your child is a high school senior applying


to colleges right now, why the chances that he or she will be admitted to his or her first choice college are so low. But, like the Trojan horse that was actually full of soldiers who jumped out of the gift to do great harm to the unknowing city that accepted it, the idea that racial affirmative action is the reason that poor white children and white children from working class families are absent from American colleges or the reason that high-scoring Asian [American] students are denied admission is only a big and enticing distraction.45

The media marketing and legal presentation of Trojan horse admissions cases as college admissions merit-focused is a fake gift for many reasons. First, significant percentages of admissions to Ivy League colleges such as Harvard, Princeton, and Yale have historically been contingent on non-academic criteria (like being “paying customers”) and academic criteria (like scores on exams administered in Greek and Latin) that advantage well-connected and wealthy students.46 But, the legal claims for relief in Trojan horse admissions lawsuits only seek to end race affirmative action, which does nothing to redress advantages enjoyed by the wealthy or the race discrimination Asian Americans experience as a result of the white-advantaging components of college admissions.47 Second, the U.S. News and World Report (USNWR) rankings have come to play a greater and greater role in perceptions about the quality of colleges and

45. West-Faulcon, supra note 2. These points, which I made in 2015 about the Fisher case, which the Supreme Court decided in favor of UT Austin in 2016, also apply to the SFFA v. Harvard/UNC lawsuit, which the Court decided against Harvard and UNC-Chapel Hill in 2023.

46. See Jerome Karabel, The Chosen: The Hidden History of Admission and Exclusion at Harvard, Yale, and Princeton 13–38 (2006) (describing how in scholastic matters, however, the “gentleman’s C” reigned supreme in days that students of “distinguished lineage” like Franklin Delano Roosevelt who attended “the most socially elite of America’s boarding schools” like “Groton” competed ferociously for “social position and the leadership of extracurricular activities” such as “the Crimson presidency” with “the academic side of the college experience ranking a distant third behind club life and campus activities”). By the 1890s, “the Big Three”—Harvard, Yale, and Princeton—were dominated by a value system and culture which elevated being a “gentleman” over being a “grind”—someone who attends only to study—such that “[i]mplicit in these ideals was a particular definition of ‘merit’—one that considered ‘character,’ ‘manliness,’ and athletic accomplishment as important as academic excellence.” Id. at 18–21, 38, 564 n.60 (explaining that subject-based exams “were not especially demanding” and noting that “of 405 Groton applicants to Harvard between 1906 and 1932, only 3 were rejected”).


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universities. Also, electronic college application platforms like the Common Application have made it much easier for larger and larger numbers of high school students than decades ago to apply to the top-ranked Ivy League colleges like Harvard and the most selective flagship campuses of state public university systems like the Austin campus of the University of Texas, the Chapel Hill campus of the University of North Carolina, and the Berkeley campus of the University of California. In addition, the pools of exceedingly qualified candidates to these highly-coveted institutions have ballooned but the number of spots has remained constant. Meanwhile, the USNWR ranking system encourages colleges to maximize their “selectivity” by soliciting larger and larger numbers of applicants to apply. Colleges do this to boost their institution’s USNWR selectivity score. Higher numbers of denied applicants—the basis for calculating school selectivity—necessarily results when more and more students apply because the number of new student slots is limited by each institution’s classrooms, living space, and faculty instructional capacity and thus remains basically constant from year to year. Here again, the relief sought by Trojan horse admissions lawsuits—ending race affirmative action—does nothing to impact these types of factors that make contemporary college admissions increasingly more challenging each year for applicants of all races.

The deceit perpetrated by the Repression army is its blaming of affirmative action for all that ails college admissions and its false presentation of Trojan horse admissions cases as the solution to problems that have nothing to do with the limited degree of inclusion-motivated consideration of race permitted by the Supreme Court’s Bakke-Grutter-Fisher “strict

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48. The myriad contributing factors are encapsulated well in this quote from a 2019 article in the L.A. Times:

The college admissions landscape began radically shifting in the 1990s. Students who used to apply to a few local colleges could more easily try their luck at dozens of schools using centralized online admissions platforms, such as the Common Application. Colleges began recruiting more students—both to increase diversity and to bring in revenue from application fees that helped them weather cyclical recessions, he said. At the same time, more applications lowered admission rates, which helped campuses burnish reputations as selective institutions in highly influential college rankings published by U.S. News & World Report, [UC Irvine vice provost Douglas Haynes] and [Chapman University professor Susan Paterno] said. As state governments reduced public support for higher education, many campuses began recruiting students paying out-of-state tuition, including many from other countries. That in turn swelled the number of applicants even more. UCLA, the most popular university in the nation, now attracts more than 110,000 applications for about 6,000 freshman seats. “All of this is driving manic competitiveness in college admissions at all levels,” Paterno said. “A lot of this hype is making families crazy.”

See Watanabe & Khouri, supra note 43.

49. Id.

50. Id.
scrutiny” test since the 1970s.\footnote{51 See infra notes 277–284 and accompanying text.} Without regard to the legal merits and differences in how race is or is not used in the admissions policies of the institutions targeted for attack, Trojan horse admissions cases are designed with an exterior that is so appealing—like the beautiful exterior of the wooden horse that led to the destruction of Troy—that recipients accept it over the warnings of danger from comrades and their own instincts.\footnote{52 See Virgil, supra note 8, at 37, 46 (describing suspicions among the Trojans that Greek warriors were hidden in the gift wooden horse and the warnings of Laocoön and Cassandra that the gifts from Greeks should not be trusted).} The intricate carpentry construction that made the wooden horse enticing to the Trojans is analogous to the morally virtuous appeal to a valid concern many Americans have that the college admissions process unfairly advantages the children of wealthy and powerful individuals,\footnote{53 See Watanabe & Khouri, supra note 43 (reporting that “[s]tudents and parents have long suspected that money and connections help win access to top-tier colleges” and that the March 2019 federal indictments of wealthy parents in “a massive nationwide” college admissions “scam” reinforced “what many say is a drastic imbalance between the uber-rich and everyone else in the hyper-competitive college admissions game”).} making it more difficult for poor and middle-class college applicants striving to access coveted higher education and job opportunities to improve their socioeconomic circumstances.\footnote{54 See id. (describing the state of California’s public university system as playing such a role by observing that “[t]oday, the UC system’s nine undergraduate campuses are widely regarded as powerful engines of social mobility”).} Trojan horse admissions lawsuits offer no solutions for these problems because the judicial relief sought in these cases—destroying affirmative action in admissions—offers no solutions to the systemic changes that have taken place in selective college admissions over the past decades and also offers no solutions to the unethical choices made by rich and famous parents to bribe and advantage their undeserving children.\footnote{55 Operation Varsity Blues, a massive nationwide scandal where at least thirty-three parents were charged with federal crimes for trying use a “side door” to gain their children admission into top universities, is an example of the reasons many Americans believe the wealthy and well-connected manipulate the college admissions process. See Matthew Ormseth, High-Profile Lawyer Admits Guilt and Defends His Daughter in College Admissions Scandal, L.A. TIMES (Apr. 5, 2019), https://www.latimes.com/local/lanow/la-me-parent-college-admissions-scandal-gordon-caplan-20190405-story.html [https://perma.cc/JUA3-B9SK].}
rank—to pit poor whites against hypothesized “wealthy blacks” to give attacks on affirmative action a falsified veneer of moral virtuousness.\footnote{56}{Richard Kahlenberg’s method of marketing Trojan horse lawsuits is a thinly veiled race-baiting that misrepresents UT Austin’s admissions policy. Cf. David Savage, In Supreme Court Case, University Defends Race-Based Policy Giving Middle-Class Minorities an Edge, L.A. TIMES (Nov. 25, 2015), https://www.latimes.com/nation/la-na-supreme-court-affirmative-action-20151125-story.html [https://perma.cc/7VMC-Y83Q] (reporting that in discussion of Fisher lawsuit against UT Austin that “Richard Kahlenberg, a leading advocate of need-based affirmative action, says universities should give breaks to students—regardless of their race—who come from low-income families and whose parents did not go to college” without reporting that UT Austin does in fact give preferences to students from low-income families and whose parents did not go to college). Kahlenberg goes so far as to suggest, without any real-word examples, that UT Austin would select “a wealthy African American graduate of a prep school” over “a poor white student from a trailer park” if the situation presented itself. Id. (reporting on Kahlenberg’s amicus brief in Fisher v. Texas).}

It is falsehoods and myths, not facts and truth, about university admissions that make Trojan horse admissions lawsuits appealing to justice-minded individuals. I expose the falsehood of the presentation of the Fisher lawsuits against UT Austin as a gift bringing greater fairness to the socioeconomically disadvantaged by pointing out that the Trojan horse battle tactic manufactures a false dichotomy between socioeconomic and race affirmative action. I explain that the UT Austin admissions policy “includes a much longer list of other non-racial admissions criteria,” such as five socioeconomic subfactors and only one single permissible, but not required, race subfactor:

While the overwhelming majority (over 80 percent) of UT students were admitted based solely on their grade point rank in their high school, a small portion of students are admitted under the part of the UT policy that does include a single factor permitting (but not requiring) admissions readers to consider an applicant’s race. It even permits positive consideration for the race of a white applicant who attended a predominantly minority school or engaged in activities with nonwhites.

In addition, UT’s policy includes five “special circumstances” factors that would certainly detect whether a student is low-income: 1) “the socioeconomic status of the student’s family,” 2) “whether the student lived in a single-parent home,” 3) “the language spoken at the student’s home,” 4) “the student’s family responsibilities,” and 5) “the socioeconomic status of the student’s high school.”\footnote{57}{West-Faulcon, supra note 2.}

Even under the false implication that UT Austin’s admissions policy lacked a socioeconomic affirmative action policy, the relief requested in the Fisher Trojan horse lawsuit which focused exclusively on destroying
inclusion-motivated attention\textsuperscript{58} to race—ending “the use of race”—and overruling the Bakke-Grutter-Fisher line of cases\textsuperscript{59} would not put such a policy in place. This is because such cases are not crafted to and do not request any judicial relief that rectifies either socio-economic-based unfairness or the numerous other forms of systemic racial unfairness of the “affirmative action-less” components of college admissions.\textsuperscript{60} The reality that UT Austin considered five socioeconomic factors—far more consideration than its policy gave to race—exposes as a façade the idea that a win in the Fisher Trojan horse lawsuit would somehow translate to better admissions outcomes for low-income applicants.

Finally, I explain that the Fisher admissions lawsuit was designed to create precedent about the meaning of the Fourteenth Amendment Equal Protection Clause which in turn will destroy the racial-inclusion provisions of Title VI and Title VII of the Civil Rights Act of 1964:

So, what is to be gained from [] the Fisher lawsuit? Why make a mountain—literally a federal case—out of UT’s molehill use of race? Why use poor whites and [Asian Americans] as a wedge? Why suggest that black and Latino students who are admitted to elite schools are unqualified to be there? Well, for the architect of the Fisher lawsuit, the end-game goal is to hopefully change how the Supreme Court reviews government actions that consider race [for purposes of inclusion].

Cases like Fisher v. Texas have been carefully orchestrated. The truth is that the plaintiffs (including Abigail Fisher and the plaintiff in the case that succeeded in eliminating a key provision of the Voting Rights Act), the lawyers, and the funding for these cases were all identified and matched by the same person with a long-term agenda to overturn civil rights laws.

. . . .

Once Blum’s group is done suing colleges, it will be one step closer to getting the Court to strike down other civil rights laws in areas like employment.\textsuperscript{61}

When the Fisher case was before the Supreme Court in 2015, it possibly seemed far-fetched that lawsuits regularly described as designed to

\textsuperscript{58} See Cheryl I. Harris & Kimberly West-Faulcon, Reading Ricci: Whitening Discrimination, Racing Test Fairness, 58 UCLA L. REV. 73, 104 (2010) (“[W]e assert that racial attentiveness can lead to race-positive, race-neutral, or race-negative results.”).

\textsuperscript{59} See Harpalani, supra note 47.

\textsuperscript{60} See id. (explaining how, “[a]t the Supreme Court, SFFA’s bait-and-switch strategy became fully visible” as SFFA “eschewed” legal focus on the interests of Asian Americans to “focus[] mostly on striking down affirmative action”).

\textsuperscript{61} West-Faulcon, supra note 2.
increase racial fairness and merit-driven selection were, instead, stealthily camouflaged destroyers of civil rights legislation. Today, we live in that then-difficult-to-imagine reality. The next sections place Trojan horse admissions lawsuits in a broader historical context using observations made by Professor Randall Kennedy about the tactical shift from blatant white supremacy as justification for racial exclusion to a camouflaging lexicon that I explain was honed by a key strategist for the contemporary Repression army. Recognizing that, by 1964, a majority of Americans had come to view blatant racism and invocations of white supremacy as immoral, that strategist sets forth the intellectual framework for what Professor Kennedy explains is a shift over the decades between his childhood and adulthood in the Repression army’s tactics from direct to indirect attack.

B. Feigned Retreat

In 2014, Harvard law professor Randall Kennedy published an article in *Harper’s Magazine* focused on Title II of the Civil Rights Act of 1964 on the five-decade anniversary of the law. Professor Kennedy begins *The Civil Rights Act’s Unsung Victory* by sharing a fond childhood memory that stemmed from the “dismal situation” of the widespread blatant anti-Black racism African Americans encountered in businesses open to the public—“privately owned places of public accommodation.” Kennedy begins by sharing that, as a child, he thought the meticulous preparation for the car journey from his home in Washington, D.C. to his birthplace in Columbia, South Carolina was an effort by his parents “to make the eight-hour ride into a party” for him, his older brother, and younger sister. Professor Kennedy explains that “[o]nly later” in his life and as he matured did he learn that his parents’ extensive preparations were to minimize their African American family’s encounters with the degradation of the whites-only rules of “filling stations, restaurants, motels, and other public accommodations.”

62. 42 U.S.C. § 2000a (prohibiting discrimination on the basis of race, color, national origin, and religion in privately owned places open to the general public).
63. See *Kennedy*, supra note 12.
64. Id.
65. Id.
66. Id. (describing the interstate holiday travel preparation tactic of packing drinks and food in coolers that Professor Kennedy’s mother and father employed “when [he] was a kid, in the early Sixties”). Such rules were commonplace in commercial business across the U.S in the nineteenth and twentieth centuries. See, e.g., VICTORIA W. WOLCOTT, RACE, RIOTS, AND ROLLER COASTERS: THE STRUGGLE OVER SEGREGATED RECREATION IN AMERICA (2014); see also *Kennedy*, supra note 12. In an 1883 opinion, the Supreme Court struck down the Civil Rights Act of 1875—a federal statute that was the nineteenth-century version of Title II, except that the 1875 act had stronger enforcement mechanisms than Title II. *See* The Civil Rights Cases, 109 U.S. 3 (1883) [hereinafter The (Anti-)Civil Rights
Believing few Americans remember why there was a need for Title II in this nation and that few know how vigorously Title II was opposed and attacked in the early sixties, Kennedy explains how opponents of Title II “developed a vocabulary of obstruction” that “echoes” in “current disputes over affirmative action.”

Professor Kennedy proceeds to describe what this Article labels the first phase of the Repression army’s use of the battle tactic of feigned retreat when observing that, while he was still a child in the 1960s, “white supremacists had to find a politically palatable way to do what [the n-word] had formerly done.”

The reason racists needed to shift the vocabulary they employed was because of the raised consciousness of the immorality of racism among White Americans brought about due to the success of the American Civil Rights Movement. Considerations of potential parallels between anti-Black racism in America and historic massive oppressions of minorities in other contexts also contributed to this newly raised White American consciousness of the immorality of racism.

Large numbers of African Americans and significant numbers of people of other races, many of them young people, such as my own cases of 1883. Accordingly, the U.S. Congress enacted Title II as well as the entirety of the Civil Rights Act of 1964 pursuant to its commerce power, not its Section 5 power to enforce the Fourteenth Amendment. See, e.g., Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964). Still today, the Supreme Court has never corrected that 1883 opinion, a ruling that the operation of commercial businesses like restaurants, theaters, trains, and hotels as fully whites-only or with whites-only sections is beyond the reach of the restrictions of and Congress’s power to enforce the Fourteenth Amendment of the U.S. Constitution. See Kennedy, supra note 12 (describing the Supreme Court’s majority ruling in the 1883 cases as “[e]ight of the nine justices concur[ring] that for the sake of prudence, precedent, federalism, and [White people’s] personal autonomy, private racial discrimination should remain exempt from federal constraint”). It is an opinion from which Justice John Marshall Harlan—the Supreme Court justice dubbed “the great dissenter,” see PETER S. CANELLOS, THE GREAT DISSENTER: THE STORY OF JOHN MARSHALL HARLAN, AMERICA’S JUDICIAL HERO (2021)—dissented vigorously.

67. Kennedy, supra note 12 (“We should also recognize echoes of the fights from ’64 in current disputes over affirmative action, health-care expansion, and a host of other political issues.”).

68. Id. (explaining that Title II “was once heavily contested” and that the race discrimination Kennedy’s family encountered in the early 1960s is “outside the lived experience” of most White Americans and younger African Americans).

69. Id.


71. In addition to the important work of the Reverend Martin Luther King, the movement to protest White America’s moral countenancing and legal sanctioning of structural, Jim Crow-style systemic, and individually-mediated blatant racism and to advocate for local, state, and federal civil rights
father, but were jailed, beaten, gassed, and murdered during this important and tumultuous civil rights movement era of American history. Achieved at this significant personal and collective cost, the national shift in how the majority of White Americans perceived blatant racist acts and vocabulary—that “[b]y 1964, however, outright expressions of racist sentiment were increasingly seen as ugly”—had the positive effect of “White attendants and cashiers start[ing] to call Kennedy’s father ‘sir’ and [his] mother ‘ma’am.’”


75. See, e.g., Bodroghkozy, supra note 70 (describing the beating and gassing of John Lewis and hundreds of peaceful protesters marching across the Edmund Pettus Bridge in Selma, Alabama on March 7, 1965).

76. An Alabama state trooper fatally shot civil rights peaceful protestor Jimmie Lee Jackson in Marion, Alabama. Id.

77. Kennedy, supra note 12; see also, e.g., MARTIN LUTHER KING, JR., WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY? 3–5 (1967) (describing the sincerity of “[t]he outraged white citizen . . . when he snatched the whips from the Southern sheriffs and forbade them more cruelties” and King’s view that “[t]he majority of white Americans [in 1967] consider themselves sincerely committed to justice for the Negro”). King, a long-time target of white supremacist violent threats and physical and verbal assault for his civil rights advocacy, was the victim of a targeted assassination on April 4, 1968, hours after speaking at a rally in support of sanitation workers on strike in Memphis, Tennessee. See id. at v (book front matter photo caption text).

78. Id. (arguing that the “transcendent importance” of the “symbolism of inclusion” conferred to African Americans and other non-Whites should be recognized and valued).
Here, again, analogy to the Greek wooden horse scheme is apt. Feigned retreat by the Greek army is integral to the success of the Greeks’ war-ending attack on Troy. To create a false sense among the Trojans that the threat posed by the Greek army had dissipated, the Greeks feign retreat by leaving a Greek soldier named Sinon who pretends to be an escaped captive who has turned against the Greeks. Sinon presents the lie that the Greek army has retreated and returned to Greece as if he is sharing information with the Trojans as their sincere ally. But, the truth is that the Greek army is hiding on the nearby island of Tenedos waiting to return to attack Troy after leaving Sinon to tell a series of carefully crafted lies to the Trojans that facilitate the subterfuge of the wooden horse-based masterplan. The falsehood of the Greek’s retreat is integral to Sinon’s “perjured”79 story. The Greek army needs the Trojans to believe they have left for good in order to overcome the Trojan’s well-founded suspicion that the wooden horse is a trick.

Trojan horse admissions lawsuits, in the context of the centuries-long battle over full inclusion of non-Whites in America’s multi-racial democracy, are the Repression army’s deployment of the rhetorical and legal theory equivalent of leaving Sinon to convince the Trojans that the Greek army had given up the war. Using vocabulary and arguments carefully crafted with the pithiest framings of libertarian and states’ rights ideas, the late twentieth-century Repression army executed a feigned retreat battle tactic in a way that has buttressed the modern-day success of Trojan horse admissions cases.

In particular, for the past fifty years, legal-expert-crafted vocabulary and arguments have succeeded in giving most Americans the false security that the Repression army retreated after losing its massive fight to thwart the passage of civil rights laws in the 1950s and 1960s. Three such key strategists in developing the feigned retreat vocabulary and legal arguments are lawyers, all three of whom later become Republican-appointed federal or state judges. Arizona attorney William Rehnquist—who would go on to be Chief Justice of the U.S. Supreme Court, Yale Law School professor Robert Bork, and a 1980s and 1990s founder and director of litigation of a prominent anti-diversity organization named Clint Bolick80 are the three prominent examples discussed here. Rehnquist and Bork deserve credit as legal masterminds of the Repression army feigned retreat executed from the mid-1960s and into the 1970s, for which Arizona U.S.

79. VIRGIL, supra note 8, at 44.
80. See LEE COKORINOS, THE ASSAULT ON DIVERSITY: AN ORGANIZED CHALLENGE TO RACIAL AND GENDER JUSTICE 6 (2003) (describing the 1970s creation and growth of large numbers of “conservative legal policy organizations” formed “to attempt to roll back the gains of the environmental, consumer rights, and civil rights movements”).
Senator Barry Goldwater is an important mouthpiece. Bolick is a primary and singularly influential intellectual, legal, political, and media strategist of the feigned retreat executed in the 1980s and 1990s, for which Edward Blum, Trojan horse admissions lawsuit purveyor, is a key frontman and spokesperson.

Professor Kennedy’s analysis in *The Civil Rights Act’s Unsung Victory* discusses Repression army positions dating back to when “white domination [of African Americans in the nineteenth century] was underwritten by legal chicanery and extralegal violence;” when “[t]he state[] of the former Confederacy had begun chipping away at the rights of black people

81. Although it is beyond the scope of this Article to examine, other lawyers, such as Roger Clegg, contributed significantly to this feigned retreat project. See, e.g., *id.* at 21, 45, 52–53, 122. Another important mouthpiece of feigned retreat is Ward Connerly, former member of the University of California Board of Regents and close ally to former California governor and failed Republican presidential candidate Pete Wilson. *Id.* at 36–39. Connerly’s non-White racial identity afforded him significant rhetorical leeway from national and local news media. *Barry Bearak, Questions of Race Run Deep for Foe of Preferences, N.Y. Times* (July 27, 1997), https://www.nytimes.com/1997/07/27/us/questions-of-race-run-deep-for-foe-of-preferences.html (“His blackness, he agrees with some reluctance, grants many whites a kind of absolution, allowing them to protest affirmative action ‘without having to feel like they appear racist.’”).


83. It is beyond the scope of this Article to offer more examples of the numerous groups and individuals comprising the various flanks of the Repression army in the five decades since the founding of the Pacific Legal Foundation (PLF) in 1973. PLF, “the first in a series of right wing ‘public interest organizations,’” was founded by Edwin Meese who, at the time, was chief of staff to then-California governor Ronald Reagan and was provided $1.9 million by billionaire Richard Mellon Scaife to start PLF. See COKORINOS, supra note 80, at 86; see also, e.g., *SHELDON WHITEHOUSE, THE SCHEME: HOW THE RIGHT WING USED DARK MONEY TO CAPTURE THE SUPREME COURT* (2023); JANE MAYER, DARK MONEY: THE HIDDEN HISTORY OF THE BILLIONAIRES BEHIND THE RISE OF THE RADICAL RIGHT (2016).

almost immediately after emancipation;” when “[i]n 1883 the Supreme Court ruled that the Civil Rights Act of 1875” was unconstitutional “because it supposedly exceeded the new [federal government Fourteenth Amendment] powers” because it was directed at commercial businesses operating whites-only theaters, hotels, and public transport after the Civil War; and, egregiously, when in Plessy v. Ferguson “[t]he Supreme Court ruled” in contradiction to its reasoning in the 1883 case “that laws mandating” whites-only facilities were not a violation of the Fourteenth Amendment’s text declaring that “[n]o state shall . . . deny to any person . . . the equal protection of the laws.”

To demonstrate how flagrantly white supremacy was expressed in public by Whites prior to the 1960s, Kennedy offers the statement of a U.S. Senator named Benjamin Tillman as an example of the openly racist vocabulary employed and broadly condoned in white society for centuries. Tillman employs the n-word as follows: “Tillman criticized President Theodore Roosevelt in 1901 for inviting Booker T. Washington to dine at the White House, he remarked, plainly, ‘[e]ntertaining that ni[**]er will necessitate our killing a thousand ni[**]ers in the South before they will learn their place again.’” Kennedy contrasts n-word and violence-tinged language with the switch in language employed by U.S. Senator of Arizona

85. Id.
86. Id.
87. Id.
88. U.S. Const. amend XIV, § 1.
89. Kennedy, supra note 12.
90. The battle tactics of the twentieth-century forces fighting for white predominance—tactics such as riots involving mass lynchings and massacre, bombings as vigilante justice and that were condoned by local law enforcement, lawn cross burnings and Klan rallies, assassinations by gunshot, police dogs, fire hoses, and use of the n-word—were as overt, direct, and frontal as the tactics of the post-Civil War 1870s forces fighting for white predominance and supremacy. See, e.g., John Hope Franklin, From Slavery to Freedom: A History of African Americans (2010); John Hope Franklin, The Color Line: Legacy for the Twenty-First Century (1993); John Hope Franklin, Reconstruction After the Civil War (1961); Eric Foner, Reconstruction: America’s Unfinished Revolution, 1863–1877 342–43 (2014) (observing that political violence spread throughout Southern states, with the Ku Klux Klan leading the reign of terror). On violent riots by Whites, see generally, e.g., Scott Ellsworth, Death in a Promised Land: The Tulsa Race Riot of 1921 (1992) (account of White rioting and massacre of African Americans in Tulsa, OK in 1921); see also David Zucchino, Wilmington’s Lie: The Murderous Coup of 1898 and the Rise of White Supremacy (2020) (account of White rioting and murder of African Americans in Wilmington, NC in 1898); William M. Tuttle, Race Riot: Chicago in the Red Summer of 1919 (1996) (account of more than a week-long multi-day period of racial violence started by White Americans against African Americans in Chicago, IL in 1919 during which many people died, hundreds were injured, and thousands of African Americans lost their homes). See, e.g., Elaine Lewisnek, The Working Man’s Reward: Chicago’s Early Suburbs and the Roots of American Sprawl 156–57 (2014) (explaining that “while [f]or decades white Chicagans has used racist violence to keep blacks out of white neighborhoods,” that “bombing was a new and terrifying tactic that
Barry Goldwater to justify his continued opposition to and vote against the Civil Rights Act of 1964. The ideas that Barry Goldwater propagates as the 1964 Republican candidate for U.S. President are not of Goldwater’s own creation. Rehnquist and Bork were important contributors to Goldwater’s political speeches, which were influenced by the two lawyers’ legal analysis.

Professor Kennedy’s article, like a recent article by journalist Nikole Hannah-Jones, pins the year 1964 and a speech by the Republican Arizona Senator Goldwater as marking an important language and argument shift for individuals and groups intent on repressing racial inclusion. In Hannah-Jones’s words, this shift is when “as this nation’s racist laws began to fall, conservatives started to realize that the language of colorblindness could be used to their advantage.” Hannah-Jones also highlights the particularly illuminating observation of a Goldwater biographer that:

when it came to race, Goldwater believed that white Americans “didn’t have the words to say the truth they knew in their hearts to be right, in a manner proper to the kind of men they wanted to see when they looked in the mirror. Goldwater was determined to give them the words.”

Significantly, the words Goldwater gave White Americans in 1964 were language and arguments, in Professor Kennedy’s assessment, for opposing civil rights with a sufficient veneer of legal sophistication to perform the same function as the n-word without that word’s connotation with blatant

had begun in Chicago in 1917” and that, “[i]n this first six months of 1919, blacks attempting to move beyond the borders of the Black Belt [of Chicago] had been met with twenty-four bombs”); id. at 157 (“No one was prosecuted for these bombings, and the police seemed uncooperative.”). The Repression army employed the tactic of bombings for decades. See, e.g., RICK PERRSTEIN, BEFORE THE STORM: BARRY GOLDWATER AND THE UNMAKING OF AMERICAN CONSENSUS 461 (2009) (observing that “[t]here had been 71 racially motivated bombings in 1964 in the Chicago metropolitan area”). Ku Klux Klan members bombed Birmingham’s 16th Street Baptist Church on September 15, 1963, killing four little girls named Addie Mae Collins, Denise McNair, Carole Robertson and Cynthia Wesley. See, e.g., generally TRACY SNIPES & SARAH COLLINS RANDOLPH, THE 5TH LITTLE GIRL: SOUL SURVIVOR OF THE 16TH STREET BAPTIST CHURCH BOMBING (THE SARAH COLLINS RUDOLPH STORY) (2020).


93. Id. (quoting PERRSTEIN, supra note 90, at 461).
anti-Black racism. Both Hannah-Jones and Goldwater biographer Rick Perlstein point out that Goldwater’s new anti-civil rights words were not all his own; instead, it was a constitutional lawyer and a law professor who gave Goldwater the words to support racist and racially exclusionary policy positions without verbally articulating overt racism. It was their legal theory-inspired words that camouflaged the project and goals of the Repression army just enough to make its combatants’ constant denial of racial hatred of African Americans potentially plausible.

The words and legal arguments like “liberty,” “states’ rights,” “freedom of association,” and “reverse discrimination” are identified by Professor Kennedy as replacements for the n-word. In saying such, Kennedy is pointing out his view that these terms and arguments are a welcome shift away from the outright degrading and dehumanizing directly racist language and direct policy opposition to non-Whites having equal rights to Whites that was prevalent in his youth, but language and arguments he still associates with racism. Writing in 2014, Professor Kennedy observes that even as Americans were “living in the second term of a black president, American politics remains divided along the same racial lines that fragmented debate over the Civil Rights Act [of 1964].” What Professor Kennedy spotlights can also be understood as the Repression army’s language tactic of feigned retreat. Individuals and groups participating in the Repression army effort that had twenty years prior argued (in the 1960s) that civil rights laws were bad policy were, by the 1980s, feigning retreat from their campaign to oppose civil rights legislation and declaring themselves essentially conquered by the ideals, values, and vision of the 1960s Civil Rights Movement they had opposed. As part of this feigned retreat battle tactic, these repression forces adopt the indirect battle tactic of asserting that their policy opposition to affirmative action and disparate

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94. See PERLSTEIN, supra note 90, at 460 (quoting Goldwater as writing in a 1970 memoir that, “I found myself becoming a political fulcrum of . . . disenchantment with the public policies of liberalism . . . . It is true enough that I sensed it early and sympathized with it publicly, but I did not originate it.”).

95. See PERLSTEIN, supra note 90, at 363 (describing William Rehnquist as “confirm[ing] Goldwater’s instincts that the Civil Rights Act of 1964 was unconstitutional” and Goldwater as “approach[ing] Professor Robert Bork of Yale University for a second opinion” and Bork providing Goldwater “a seventy-five-page brief” arguing the unconstitutionality of the landmark civil rights law).

96. See Kennedy, supra note 12 (observing that, in the 1960s, opponents of the Civil Rights Act “depicted it as snatching freedom from white business owners in order to propitiate lawless blacks by securing them preferential treatment—the precursor to recent arguments about “reverse discrimination”).


98. Kennedy, supra note 12.
impact civil rights laws is driven by the civil rights-era vision that won America in the 1960s, not the centuries-longstanding Repression army goal of protecting white predominance.

Rehnquist, a constitutional lawyer in Phoenix who would later be appointed to the U.S. Supreme Court by President Richard Nixon, along with Robert Bork, then a Yale Law professor who would later be appointed by Nixon to serve as U.S. Solicitor General and as a judge on the U.S. Court of Appeals for the D.C. Circuit, pushed Goldwater to oppose the Civil Rights Act of 1964. Senator Goldwater buoyed his political career by joining Southern senators to vote against the Civil Rights Act of 1964 despite Goldwater having voted in favor of the previous Civil Rights Acts of 1957 and 1960. It was lawyer and law professor Robert Bork who seems to have provided Goldwater with the legal reasoning that made

99. Bork became the acting U.S. Attorney General during the Watergate “Saturday Night Massacre”—he was the infamous “third person in line” who carried out President Nixon’s order to discharge the special prosecutor investigating Nixon after U.S. Attorney Elliot Richardson and his next in command, Deputy Attorney General William Ruckelshaus, both, to protect the continued investigation of Nixon’s participation in a criminal cover-up, resigned in protest and as a refusal of Nixon’s order to fire Cox. Ken Gormley, The Saturday Night Massacre: How Our Constitution Trumped a Reckless President, BLOG, NAT’L CONST. CTR. (Oct. 20, 2015), https://constitutioncenter.org/blog/the-saturday-night-massacre-40-years-later-how-our-constitution-trumped-a-riot-text=Nixon%20fired%20Watergate%20Special%20Prosecutor.laws%20hung%20in%20the%20balance [https://perma.cc/95FX-QXKG].

100. PERLSTEIN supra note 90, at 363–64. According to biographer Rick Perlstein, Goldwater was a supporter of civil rights legislation that Rehnquist opposed in Phoenix. PERLSTEIN supra note 90, at 363 (“Rehnquist had aggressively fought local antidiscrimination laws in Phoenix, where Goldwater had valiantly fought for them as appropriate and morally imperative.”).

101. See, e.g., U.S. SENATE, supra note 97; see also EEOC History, supra note 5 (explaining that, “[a]t 7:40 on the evening of June 19, after the longest debate in its nearly 180-year history, the U.S. Senate passe[d] the Civil Rights Act of 1964 [with a] vote in favor of the bill [of] 73 to 27 [and that] thirteen days later, on July 2, . . . President Lyndon B. Johnson signs the bill into law); The Filibuster that Almost Killed the Civil Rights Act, NAT’L CONST. CTR. (Apr. 11, 2016), https://constitutioncenter.org/blog/the-filibuster-that-almost-killed-the-civil-rights-act?gad_source=1&gcclid=CJ0KQCqjwZmwBhD8ARIsAH4v1gXm2dT_jaLzzL-1PpkECicwPPrm11L74zQtk5F7wLK3F7EQMjOEoaqSEALw_wcB [https://perma.cc/53Q8-GGBV] (“Committed to the filibuster effort were the powerful Senators Richard Russell, Thurmond, Robert Byrd, William Fulbright and Sam Ervin. Russell started the filibuster in late March 1964, and it would last for 60 working days in the Senate.”). The record for the longest speech by a single individual Senator is the racist filibuster of the 1957 Civil Rights Act, the federal law establishing the Civil Rights Division of the U.S. Department of Justice and empowering federal law enforcement to prosecute individuals who conspire to deny and abridge voting rights of other citizens, by South Carolina Senator Strom Thurmond that lasted for 24 hours and 18 minutes. Cf., e.g., Strom Thurmond: A Featured Biography, U.S. SENATE, https://www.senate.gov/senators/FeaturedBios/Featured_Bio_Thurmond.htm [https://perma.cc/UM4T-ZBSB].

102. Mohr, supra note 91. The quick and easy pivot was intricately designed by Yale Law professor Robert Bork and then-Phoenix constitutional law expert William Rehnquist to undergird Goldwater’s June 1964 vote against the Civil Rights Act of 1964 as not grounded in racism nor white supremacy. See PERLSTEIN, supra note 90, at 363.
voting against the most important modern federal civil rights law in history\textsuperscript{103} morally palatable for Goldwater in 1964.\textsuperscript{104}

The language and arguments that convinced Goldwater were Robert Bork’s flawed idea\textsuperscript{105} that civil rights laws, including Title II’s ban on whites-only commercial businesses and shopping rules, were unconstitutional because they violate a liberty not to associate with African Americans (one Bork falsely asserted to be found in the First Amendment).\textsuperscript{106} In a similar vein, the phrase “states’ rights” was used with immense political rhetorical success to argue that state legislatures and governors opposing rulings like Brown v. Board of Education and Roe v. Wade should have a so-called “right” to ignore those and other established Supreme Court precedents.\textsuperscript{107}

\footnotesize{103. Goldwater voted against Title II and the rest of 1964 Civil Rights Act, including Title VII’s ban on discrimination in employment and Title VI’s conditioning of optional supplemental federal funding on compliance with broadly defined federal race inclusion and antidiscrimination requirements. See Perlstein supra note 90, at 364 (describing Goldwater’s statement on the U.S. Senate floor explaining his vote against the landmark civil rights bill as reviewing Goldwater’s “conviction that racism was fundamentally a problem of the heart and not the law” and Goldwater “describing how [in his view] Titles VII and II entailed ‘the loss of our God-given liberities’”).}

\footnotesize{104. Because of the shift among most White Americans to viewing anti-Black and other forms of racism as immoral, Title II, the law prohibiting commercial businesses from operating race-segregated facilities and spaces, is probably the provision of the Civil Rights Act of 1964 that fewer flanks of the Repression army remain out to destroy. But see Glenn Kessler, Rand Paul’s Rewriting of His Own Remarks on the Civil Rights Act, WASH. POST (Apr. 11, 2013), https://www.washingtonpost.com/blogs/fact-checker/post/rand-pauls-rewriting-of-his-own-remarks-on-the-civil-rights-act/2013/04/10/9b8b91c4-a235-11e2-82bc-511538ae90a4_blog.html [https://perma.cc/933P-U8TF] (outlining the still-sitting U.S. Senator of Kentucky Rand Paul’s statements criticizing Title II of the Civil Rights Act of 1964 in an interview with the Louisville Courier-Journal and “The Rachel Maddow Show” in 2010 that “mirrored the views of his father [Rep. Ron Paul], who stood up on the House floor when it celebrated the 40th anniversary of the [1964 Civil Rights Act in 2004 and denounced it as ‘a massive violation of the rights of private property and contract, which are the bedrocks of free society.”]). On Rand Paul’s criticism of Title II, see also Roger Koppl, Why Rand Paul Is Wrong About Title II, CHRISTIAN SCI. MONITOR (May 28, 2010), https://www.csmonitor.com/Business/ThinkMarkets/2010/0528/Why-Rand-Paul-is-wrong-about-Title-II [https://perma.cc/2KGV-3AKK]. Even if disinterested in the endgame of full repeal of Title II, contemporary forces in the Repression army this Article names use language similar to that they employ in opposing key provisions of Title VI and Title VII to justify their present-day opposition to a proposed LGBTQIA+-rights-protective equivalent to Title II—the Equality Act. See, e.g., Mike Braun, Why I Oppose the Radical ‘Equality Act’, WASH. EXAM’r (Apr. 14, 2021), https://www.braun.senate.gov/newstoom/rop-eds/washington-examiner-why-i-oppose-radical-equality-act/ [https://perma.cc/WBZ5-487W] (opinion article of current U.S. Senator of Indiana Mike Braun).}


\footnotesize{106. Id. Robert Bork’s New Republic article is a prime example of this lexicon. See Robert Bork, Civil Rights—A Challenge, NEW REPUBLIC, Aug. 31, 1963, at 21.}

\footnotesize{107. COKORINOS, supra note 80, at 29.
After losing the vote and moral battle over the Civil Rights Act of 1964, the Repression army replaced the direct frontal attacks on racial inclusion-focused laws and policies with a feigned retreat tactic even more indirect than Bork’s freedom-to-be-racist reasoning. The contemporary feigned retreat strategy of the current iteration of the Repression army was designed by an individual named Clint Bolick.\(^{108}\) Bolick now serves as a justice on the Supreme Court of Arizona, is a “research fellow” at the Hoover Institution, and a previous director of the Goldwater Institute for Constitutional Litigation.\(^{109}\) In his early career, Clint Bolick was “a young assistant” to Clarence Thomas at the EEOC and his relationship with now-Supreme Court Justice Thomas is “so close that Thomas is godfather to Bolick’s second child” and “Bolick refers to Thomas as his mentor.” Bolick’s writings are what makes him most deserving of the label of chief

\(^{108}\) Cokorinos’ account of just the first three decades of organized legal and policy assault on racial and gender justice is a dizzying alphabet soup of many dozens of organizations grounded on a “legacy of institutional connections and political relationships cemented in the 1980s” through “the Reagan and the first Bush administrations’ endowment of a core group of lawyers with political and legal credentials” who “went on to create, nurture, and/or offer key support to the American Civil Rights Institute [(ACRI)], the Center for Equal Opportunity [(CEO)], the Center for Individuals Rights [(CIR)], the Institute for Justice [(IJ)], and the Federalist Society Civil Rights Practice Group.” Individuals who stand out among the long list of major players in the first three decades assault with three transitions—1980, 1990, and 2001—are former Reagan U.S. Attorney General Edwin Meese at the Heritage Foundation, Clarence Thomas at the U.S. Equal Employment Opportunity Commission (EEOC), Roger Clegg at CEO, and Clint Bolick at PLF. COKORINOS, supra note 80, at 7–10, 21.

Nearly two decades after Cokorinos, Nancy MacLean’s DEMOCRACY IN CHAINS, NANCY MACLEAN, DEMOCRACY IN CHAINS: THE DEEP HISTORY OF THE RADICAL RIGHT’S STEALTH PLAN FOR AMERICA (2017), identifies the same wealthy donors that Cokorinos names as funders of the “assault on diversity” as also the key funders of the “assault of our governance” that is the focus of MacLean’s analysis—in particular, that the immense concentrated wealth of the billionaires Charles and David Koch has made it possible for them “to launch such an audacious stealth attack on the foundational notion of [majority rule] government being of, by, and for the people.” Id. at 209–11. MacLean identifies economist James Buchanan as the architect of the strategy to disempower majority rule of government developed over the past six decades—the ideas—that multi-billionaire Charles Koch has found useful and bankrolls to, as MacLean argues, undermine American self-government and democracy itself. Id. at 227–29 (describing the “cadre” of Buchanan’s ideas and Koch’s money as “promoting a view of the Constitution that comes from a unique era of U.S. history: the period after the defeat of Reconstruction [by the Repression army that is the focus of this Article] and leading up to the Great Depression”—a “twisted” interpretation of the “the Fourteenth Amendment to serve the already privileged rather than the embattled citizens whose rights the amendment was designed to protect”). MacLean also notes the embrace of “judicial activism” Koch is funding and that the Koch grantee Clint Bolick, who is a central figure in the Cokorinos account of the first three decades of assault on diversity, authored THE CASE FOR AN ACTIVIST JUDICIARY, CLINT BOLICK, DAVID’S HAMMER: THE CASE FOR AN ACTIVIST JUDICIARY (2007), MACLEAN, supra, at 228–29. MacLean’s argues that the judicial activism we can expect from the Koch-funded remaking of the federal judiciary is a Supreme Court that returns America to “the age of both LOCKNER v. NEW YORK and PLESSY v. FERGUSON—decisions remembered today because they blocked majority desire for meaningful employment reform, in the one case, and allowed state-legislated racial oppression, in the other.” Id.

\(^{109}\) Fellow, Clint Bolick, Research Fellow, HOOVER INST., https://www.hoover.org/profiles/clint-bolick [https://perma.cc/7DVB-ZWLQ].
strategist for the Repression army’s contemporary attack on inclusion-motivated race attentive laws and policies. In 1983, Bolick did “the initial outlining” of a new strategy for opposing racial inclusion in the Lincoln Review. Next, in his 1988 book Changing Course, Bolick uses cherry-picked quotes and misrepresentations of the viewpoints of African Americans like Martin Luther King, Frederick Douglass, Booker T. Washington, and White abolitionist William Lloyd Garrison to support a false narrative that those individuals would support his policy positions. Bolick spins a non-existent division between the civil rights activists and leaders and singles out a subset whom Bolick charges with “abandon[ing]” and “dispos[ing]” of “the traditional goals of the civil rights movement” by “setting out a strategy wholly dependent upon the accretion and exercise of political power.”

Following the Rehnquist-Bork first effort at feigned retreat, Clint Bolick led a more successful second feigned retreat era—a period when the Repression army employed the vocabulary of “reverse discrimination” to oppose civil rights laws. Professor Kennedy’s article delineates the multiple shifts in anti-Black and anti-civil rights American vocabulary—first, the n-word is replaced with “states’ rights” and “liberty” and “freedom of association” and those terms become “reverse discrimination” and

110. COKORINOS, supra note 80, at 8.
111. Id. at 7, 135 n.28.
113. See id. at 147, 46–47; cf. KING, JR., supra note 77, at 95. King was explicit in his support of inclusion-motivated attention to race and race equality in outcomes in employment, education, housing, and political power in the following statement:

[A]bsolute justice for the Negro simply means, in the Aristotelian sense, that the Negro must have “his due.” There is nothing abstract about this. It is as concrete as having a good job, a good education, a decent house and a share of power. It is, however, important to understand that giving a man his due may often mean giving him special treatment. I am aware that has been a troublesome concept for many liberals, since it conflicts with their traditional ideal of equal opportunity and equal treatment of people according to their individual merits. But this is a day which demands a new thinking and the reevaluation of old concepts. A society that has done something special against the Negro for hundreds of years must now do something special for him, in order to equip him to compete on a just and equal basis. KING JR., supra, at 95 (emphasis in original); see also id. at 216 n.7 (citing MARTIN LUTHER KING, JR., WHY WE.CAN’’T WAIT (1964) “[f]or an elaboration of this theory”). Thus, it is a flagrantly unfair appropriation of civil rights icons like Martin Luther King to frame them as supporters of the Repression army’s goal of destroying inclusion-motivated attention to race in real-world outcomes. King explicitly rejected the degraded view of “traditional civil rights” Bolick advocates. See id.

114. BOLICK, supra note 110, at 53 (criticizing Bayard Rustin for advocating for African Americans to have access to political institutions and the exercise of political power) (citing to criticize BAYARD RUSTIN, DOWN THE LINE 118 (1971)).
115. Kennedy, supra note 12.
“colorblindness.” The particulars of the Repression army’s feigned retreat rhetorical, legal, and organization-naming strategy are closely tied to the strategy outlined by Bolick.

Clint Bolick’s contribution to feigned retreat involved “the laying of the groundwork for the creation of organizations specifically dedicated to overturning the gains of the civil rights movement,” advocacy, lobbying, litigation, and outlining of a strategy to give the impression that the Repression army had done the ideological equivalent of giving up the war. Bolick is also an example of one of the numerous founders and directors of the too-many-to-be-listed billionaire-funded organizations that are part of the contemporary Repression army. Bolick co-founded the Institute for Justice (IJ) with William Mellor with “seed money” from David Koch. Bolick and Mellor worked for an array of organizations, prior to founding IJ, which Lee Cokorinos identifies in his book *The Assault on Diversity: An Organized Challenge to Racial and Gender Justice* as “anti-diversity” organizations such as the Mountain State Legal Foundation (Denver) and the Landmark Legal Foundation Center for Civil Rights (Kansas City, Missouri), which was previously the Great Plains Legal Foundation.

Bolick led the Repression army adopters of civil rights vocabulary to literally contend that they are better suited to vindicate the ideals and vision of the 1960s movement for racial justice, particularly those of its well-known leader Reverend Martin Luther King. By purporting to be more attuned with and morally committed to the legacy of King than individuals who strategized and worked alongside King, Clint Bolick is an intellectual progenitor of invocations of “colorblindness” as tactical mimicry for the second phase of feigned retreat. When alive, King criticized Senator Goldwater’s feigned retreat words when King said Goldwater’s “philosophy gave ‘aid and comfort to racists.’” Due to his assassination, King did not live to similarly critique Bolick’s reliance on purported likemindedness to King.

In his book *Changing Course*, Bolick offers the reasoning that undergirds the lie hidden inside Trojan horse admissions lawsuits—that a “betrayal of civil rights” and “outright reversal” of the goals of the 1960s Civil Rights Movement has been “effectuated” by individuals Bolick

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116. See, e.g., Hannah-Jones, supra note 92.
117. In the five decades since 1973, like the “proxy army” MacLean describes in her work, the Repression army has been “operating on more fronts through more ostensibly separate organizations than ordinary mortals could easily follow.” See MacLEAN, supra note 108, at 210.
118. COKORINOS, supra note 80, at 7.
119. Id. at 69.
120. Id. at 6–7, 68–69.
121. Hannah-Jones, supra note 92.
labels “revisionists.” 122 Falsely framing civil rights leaders such as Bayard Rustin as a foe to “traditional civil rights” by labeling Rustin as among “black separatists,” Bolick asserts that “blacks” like Bayard Rustin are immorally deviating from the quest for “traditional civil rights” because of their “embrace[] of the very race-consciousness that blacks had endeavored to overcome for generations.” 123 Next, Bolick accuses “revisionists” of “altering the meaning of ‘discrimination’” by “defining discrimination in terms of disparities and outcomes [that] can be discerned by reference to statistics.” 124 Just two years later, Bolick follows up his analysis in Changing Course with two additional books—Unfinished Business: A Civil Rights Strategy for America’s Third Century 125 and The Affirmative Action Fraud. 126 Bolick’s books and ideas are a centerpiece of the Repression army’s attacks on racial DEI policies, affirmative action, and the systemic-racism-focused disparate impact provisions of federal civil rights laws. 127 Bolick’s writings explicitly articulate the moral-shifting as well as doctrinal law-shifting goals of the Repression army, which Trojan horse admissions cases are a stealthy tactic for achieving.

To shore up the legitimacy of their adherents, beliefs, and legal and policy positions that the rights of African Americans and other people of color should be repressed without including the explicit n-word-style of racism that Professor Kennedy explains most White Americans have, “by 1964,” come to view as “ugly,” 128 the Repression army executed a lawyer-conceived invoking of the values of the 1960s civil rights movement and laws to entrench racial inequality. In the case of both the Greek and Repression armies, a feigned retreat is used as a tactic to convince the opponent in war to accept a sham gift with dangerous contents because the threat of losing the war has ceased to exist. Winning entry to Troy and the prolonged war by deceit, not by head-to-head front-facing battle, is accomplished by the Greek army’s deployment of a skilled liar instead of a skilled army in direct warfare. Once a Greek thought-maker has conceived the lies, it is a skilled liar named Sinon who tells them and convinces the Trojans, first, that their longtime opponents retreated to never return and,

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122. Bolick, supra note 112, at 55.
123. Id.
124. Id. at 58.
127. See Cokorinos, supra note 80, at 5 (describing Clint Bolick’s key role in “the effort to reverse America’s commitment to diversity”).
128. See Kennedy, supra note 12.
second, that they will be blessed by the wooden horse if they trust it to be safe to take inside their city.

**C. Edward Blum’s Role as Sinon**

Among the key characteristics that the *SFFA v. Harvard/UNC*\(^{129}\) admissions lawsuit shares with the Trojan horse in Virgil’s tale are that they were both accompanied by an individual assigned the task of disseminating a false narrative to convince the opposing side in war to accept a suspicious gift from his side. In the *Aeneid*, Sinon is a Greek soldier and principal agent in the Trojan horse scheme.\(^{130}\) Sinon uses “disingenuous rhetoric and feigned victimhood” in a lie-filled story to convince the Trojans to bring the wooden horse inside the walls of Troy.\(^{131}\) Sinon’s lie is a critical facet of the Trojan horse battle tactic because it assuages the many in Troy who suspected the gift horse might be dangerous. Edward Blum, a longtime participant in the multi-decade assault on civil rights legislation like the Voting Rights Act of 1965 and racial inclusion policies like affirmative action, is an example of individuals who play a Sinon role for Trojan horse admissions lawsuits. Blum, founder of several organizations dedicated to dismantling civil rights protections for non-Whites,\(^{132}\) has proven himself adept at convincing Americans that battle tactics of the Repression army—Trojan horse admissions lawsuits like *SFFA v. Harvard/UNC*\(^{133}\) and *Fisher v. Texas*\(^{134}\)—are a racial justice conferring gift.\(^{135}\)

In 2015, I explained Edward Blum’s connection to the *Fisher* Trojan horse case as follows:

It is that person—Edward Blum, director of an organization he founded and named “the Project on Fair Representation”—who conceived and backed *Shelby County v. Holder* (the voting case) as well as

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\(^{129}\) 600 U.S. 181 (2023).

\(^{130}\) 600 U.S. 181 (2023).

\(^{131}\) 600 U.S. 181 (2023).

\(^{132}\) 600 U.S. 181 (2023).

\(^{133}\) 600 U.S. 181 (2023).

\(^{134}\) 600 U.S. 181 (2023).

\(^{135}\) That said, it is inaccurate to think of the “campaign to abolish affirmative action” as having been executed by “one man”—Edward Blum. See, *e.g.*, Jeannie Park & Kristin Penner, *The Absurd, Enduring Myth of the “One-Man” Campaign to Abolish Affirmative Action*, SLATE (Oct. 25, 2022), https://slate.com/news-and-politics/2022/10/supreme-court-edward-blum-unc-harvard-myth.html [https://perma.cc/9OS2-ERQ9] (challenging the “false narrative” of Edward Blum as “solo actor” by observing that, “[I]n reality, though, Blum is not some humble David going it alone in his battle against Goliath, but the well-off beneficiary of a powerful infrastructure of right-wing funders, think tanks, and lawyers that used its might to help end *Roe v. Wade* and will also go after voting and LGBTQ+ rights protections this Supreme Court term, on top of their attack on affirmative action”).
as *Evenwel v. Abbott* (another anti-civil rights voting case argued yesterday in the Supreme Court) and who is also behind the *Fisher* lawsuit. He is on record as saying he searched for over two and half years to find Abigail Fisher so he could go after UT Austin. He also recently funded lawsuits against Harvard and UNC Chapel Hill after searching for rejected Asian Americans to become plaintiffs. Once Blum’s group is done suing colleges, it will be one step closer to getting the Court to strike down other civil rights laws in areas like employment. Starting with lawsuits about college affirmative action is a Trojan horse for this “anti-civil rights” agenda.136

Blum’s role in advancing the Repression army’s anti-civil rights agenda while bearing false witness and pretending to be deeply personally aligned with the racial justice cause advanced by the leaders and participants in the 1960s Civil Rights Movement is what makes comparison to Sinon, “the liar,”137 apropos. Like Sinon, who told a long intricate tale to the Trojans to convince them to lower their defenses and put aside their reservations about him and the wooden horse, Blum has, for decades, weaved long elaborate tales peppered with falsehoods about himself and Trojan horse admissions cases.

Blum is a purveyor of Clint Bolick’s intellectual and strategic framework.138 As explained above, in his *Changing Course* book, Bolick falsely asserts the existence of two different “approaches” to civil rights—one “traditional” and another “revisionist.”139 Without clear and convincing justification that it is a historically or ideologically accurate connection, Bolick describes a “principle of the equality of fundamental rights” that he contends animates a “civil rights movement from the Declaration of Independence, to the abolition of slavery, to the guarantee of equal protection of laws, to the demise of ‘Jim Crow’ and repudiation of ‘separate but equal.’”140 The list of the leaders of the “civil rights movement” Bolick frames spans “from Thomas Paine, to William Lloyd Garrison, to Frederick Douglass, to Abraham Lincoln, to Booker T. Washington, to W.E.B. Du Bois, [and, lastly] to Martin Luther King.”141 Then, Bolick asserts that the persons he labels so-called “revisionist” civil rights leaders142 “largely abandoned” the “quest for civil rights.”143 According to Bolick, the

138. See *infra* notes 220–24 and accompanying text.
139. BOLICK, * supra* note 112, at 81.
140. Id. at xii.
141. Id.
142. Bolick says that the “proposals outlined in the following pages” are a “first step in restoring the course of civil rights” that “has lost a great deal of ground in the past 25 years [between 1963 and 1988]” and blaming this on the Bolick’s assertion that “Bayard Rustin personified this sudden departure from established principles [of the traditional civil rights movement].” *Id.* at 81.
143. *Id.*
“revised agenda” that, after King’s assassination, put civil rights off-course is the acts of so-called “revisionist” civil rights leaders who advocate for racial “parity” instead of being satisfied with the promise of “equal opportunity.”

Bolick’s central argument in Changing Course is that Martin Luther King sought only equal racial opportunity and Bolick’s corollary claim that laws and individuals supporting the immediate achievement of racial parity in outcomes are straying from King’s “original vision.”

145 Naming “past heroes, from Frederick Douglass and William Lloyd Garrison to Booker T. Washington and Martin Luther King,” Bolick concludes his book with a call to restore the vision of these individuals—“It is the vision of these heroes that the present movement has abandoned—and which the new civil rights leaders [referring to opponents of busing, disparate impact laws, and affirmative action] must reclaim.”

The specific false narrative that Bolick introduces in 1988 Changing Course is that in the 1960s, the original vision of the civil rights movement went off-course—deviating from the original goals of individuals like Martin Luther King—by advocating elimination of racial disparities in hiring, admission to selective universities, K-12 educational access, and opportunities to execute government contract projects.

However, Martin Luther King’s words—from a book Bolick cites multiple times—belie Bolick’s assertions (and Blum’s decades of storytelling based upon them). The words of Martin Luther King expose the falsity of Bolick’s narrative. King supported literal “special treatment” that something “special” be done “for” African Americans to bring about racial justice. In fact, Martin Luther King, in 1967, far from opposing affirmative action, endorsed it when he declared, “It is, however, important to understand that giving a man his due may often mean giving him special treatment.”

Specifically, King wrote:

The white liberal must see that the Negro needs not only love, but also justice. It is not enough to say, “We love Negroes, we have many Negro friends.” They must demand justice for Negroes. Love that does not satisfy justice is no love at all. It is merely sentimental affection, little more than one would have for a pet. Love at its best is justice concretized. Love is unconditional. It is not conditional upon one’s staying in his place or watering down his demands in order to

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144. Id. at 53–55, 82.
145. BOLICK, supra note 112, at 147.
146. Id. at 147.
147. Id. at 53–55.
148. Id. at 11, 52, 148 (citing KING, JR., supra note 77, at 70–71).
149. Id. at 95.
150. KING, JR., supra note 77, at 95.
be considered respectable. He who contends that he “used to love the Negro, but . . .” did not truly love him in the beginning, because his love was conditioned upon the Negroes’ limited demands for justice.

The white liberal must affirm that absolute justice for the Negro simply means, in the Aristotelian sense, that the Negro must have “his due.” There is nothing abstract about this. It is as concrete as having a good job, a good education, a decent house, and a share of power. It is, however, important to understand that giving a man his due may often mean giving him special treatment. I am aware of the fact that this has been a troublesome concept for many liberals, since it conflicts with their traditional ideal of equal opportunity and equal treatment of people according to their individual merits. But this is a day which demands new thinking and the reevaluation of old concepts. A society that has done something special against the Negro for hundreds of years must now do something special for him, in order to equip him to compete on a just and equal basis.151

Through these words, Martin Luther King made it clear that his vision for the racial justice movement included race affirmative action policies. Martin Luther King’s words also make it absolutely clear that he considered the Civil Rights Movement’s ultimate goal to be racial parity—full inclusion outcomes for African Americans and other people of color in high-quality education, employment, and housing—the outcomes protected and incentivized by provisions of the Civil Rights Act of 1964, like Title VI and Title VII, and the Fair Housing Act.152 So, when Blum retells Bolick’s assertions that (1) “revisionists’ obsession with proportional representation in the public schools,”153 (2) civil rights advocates developing “a movement toward proportional representation in employment and higher education,”154 (3) “using the legal construct that equates ‘underrepresentation’ with discrimination,” and (4) “the concept of

151. Id. at 95.
152. See King, Jr., supra note 77, at 5. The Fair Housing Act was enacted one week after King was murdered. See, e.g., History of Fair Housing, FAIR HOUSING ADVOCATES OF N. CAL., https://www.fairhousingnorcal.org/history-of-fair-housing.html (“On April 11, 1968, just one week after Dr. King was shot, the Federal Fair Housing Act was finally put into law. It was a fitting tribute to Dr. King’s life’s work and a lasting legacy of a man who had been at the forefront of the struggle for equality in the United States.”).
153. BOLICK, supra note 112, at 62.
154. Id. at 63 (asserting that favoring policies that encourage proportional inclusion of African Americans in K-12 schools, employment, higher education, and affirmative action policies “tacitly validate the racist notion that equal opportunity is not sufficient for black progress”). Citing Clarence Thomas, Bolick next sets forth the nonsensical contention that expectations of proportional representation of African Americans in previously whites-only elementary and secondary public schools, employment, and higher education—what Bolick calls “the revisionists’ underrepresentation construct”—validates a “racist notion.” Id.
affirmative action” are inconsistent with “the traditional principles of civil rights,” it is a bald-faced lie. Blum is serving a Sinon-like role, delivering statements that are paraphrasings of Bolick’s writings. In particular, Blum lies when he repeatedly describes his anti-inclusion activism as “restoring the original vision” of the leaders of the American Civil Rights Movement like Martin Luther King.

More than telling a lie about the plans and whereabouts of the Greek army, Sinon told the Greeks a lie about his own identity. Edward Blum tells a similarly false narrative about his identity. Sinon pretended he had given up his allegiance to the Greeks and was, therefore, someone the Trojans could trust. Like Sinon’s intricate lie that he managed a narrow escape from the Greeks who were holding him as a prisoner just before they sailed away never to return, Blum’s description of himself as a “Yente the matchmaker” out to “restore the original vision” of the 1960s Civil Rights Movement who is driven by his “unsuccessful Congressional campaign” in a Houston district is Blum’s version of a Sinon-like falsified backstory. The Greek army assigns Sinon to tell the Trojans the lie that Sinon is an escaped captive of the Greek army. Analogously, Blum tells Americans in news interviews that he is an unassuming harmless solo-operating activist against race consciousness who has escaped liberal

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155. Id. at 62–63. (“Like busing, racial preferences tacitly validate the racist notion that equal opportunity is not sufficient for black progress.”).

156. Id. at 81. Bolick goes so far as to assert that the Supreme Court’s unanimous 1971 ruling in Griggs v. Duke Power Co., 401 U.S. 424 (1971), see, e.g., Kimberly West-Faulkon, Exposing the Deceit About Disparate Impact, 40 Hofstra L. & Emp. L.J. 349, 356–61 (2023) (explaining facts and the contradiction of the Griggs case and the 1991 codification of its disparate impact standard by the U.S. Congress), is contrary to the goals of the traditional civil rights vision because, due to the Griggs ruling, “[Title VII of the Civil Rights Act of 1964] has thus been transformed from a non-discrimination statutes into a proportionate representation statute.” Bolick, supra note 112, at 64.

157. See infra note 159 and accompanying text.


ideology to restore the original vision of civil rights. Edward Blum further frames his origin story as a mild-mannered son of parents who participated in the civil rights movement of the 1950s and 1960s, a former college liberal who used to be a stockbroker with a deep sense of justice who lives a modest life with his wife in Maine where he runs a one-man operation on his laptop through which he has managed, without taking a salary, to single-handedly bring dozens of legal attacks on laws like the Voting Rights Act of 1965, the admissions policies of the most selective of several states’ public universities, the nation’s oldest and most prestigious Ivy League universities, and much more. It is a tale as wildly intricate as the one that Sinon told the Trojans.

Major news outlets that have published Blum’s self-descriptions miss significant details about Blum’s professional background that Cokorinos details in The Assault on Diversity. In short, how Edward Blum fits within the broader “assault” on diversity is excluded from Blum’s self-description and well-honed narrative of his personal origin story. Blum is part of an extensive organized network of individuals, organizations, foundations, and billionaire funders engaged in a fifty-year attack on race-inclusive Supreme Court rulings, policies, and civil rights laws. Missing from Blum’s telling of his story of how he finds himself in so many of the major legal and political battles of the past forty years on the side of the Repression army are the facts of Blum’s longtime affiliation with groups and organizations committed to undermining racial justice and inclusion.

Blum has been a fellow, with individuals like Charles Murray, of the American Enterprise Institute (AEI) for several decades. “Prior to

161. Savage, supra note 160.
162. Id.; SCOTUSblogoncamera, supra note 82.
163. See, e.g., Savage, supra note 160.
164. See COKORINOS, supra note 80, at 40.
165. See, e.g., Hannah-Jones, supra note 92. See generally COKORINOS, supra note 80.
166. Charles Murray, co-author of The Bell Curve, Richard J. Herrnstein & Charles Murray, THE BELL CURVE (1994), was paid a significant salary annually by the American Enterprise Institute (AEI). See, e.g., American Enterprise Institute for Public Policy Research, 2007 Form 990 Schedule A, at 11. https://projects.propublica.org/nonprofits/display_990/530218495/2009_01_EO%2F53-0218495_990_200712 (reporting 2007 one-year compensation of $148,750 for Charles Murray and “[t]otal number of other employees paid over $50,000” as 71); see also Barbara Miner, Who Is Backing the Bell Curve?, ASCD (Apr. 1, 1995), https://www.ascd.org/el/articles/who-is-backing-the-bell-curve [https://perma.cc/QL27-ZDKB] (Association for Supervision and Curriculum Development) (observing that “Bradley [Foundation], which had funded Murray at the Manhattan Institute, was willing to continue his $100,000 annual grant at his new home with the American Enterprise Institute”). For description of AEI’s provision of paid trips to attract interest in and promotion of The Bell Curve before and after its publication, see e.g., Robert M. Hauser, Review of The Bell Curve, CONTEMP. SOCIO., Vol. 24, No. 2 (Mar., 1995), at 149.
joining AEI, [Edward] Blum served as the Director of Legal Affairs at the American Civil Rights Institute (ACRI) and as President of the Campaign for a Color-Blind America, Legal Defense and Education Foundation (CCBA). As an anti-inclusion media-darling, Blum has cultivated a persona that is presented without reporting of the fact that Blum’s true identity is closely aligned with right-wing individuals, causes, and organizations. In particular, media stories often neglect to report that Blum’s organizations are just a small part of an ever-growing large alphabet soup network of name-morphing billionaire-funded right-wing organizations that enjoy favorable tax designation as non-profits. As touched upon in the previous section above, prominent national examples of such organizations include the Pacific Legal Foundation (PLF) and state versions include the Californians for Equal Rights Foundation (CFER). The first iterations of such organizations were “forged” in the “1973–74 period,” according to Cokorinos, after “[t]he right wing having lost Brown v. Board of Education, Roe v. Wade, and Miranda v. Arizona launched a number of important strategic initiatives to undermine the mainstream consensus that threatened their vision of America.”

After Blum’s Director of Legal Affairs role at ACI in the 2000s and his prior role as President of CCBA in the 1990s, Blum has maintained leadership positions and been paid on a revolving basis as Executive Director since the 2000s of the Project on Fair Representation (PFR), as president of Students for Fair Admissions (SFFA) since Blum’s founding of that organization in the 2010s, and now, starting in the 2020s, as the president-founder of at least two additional organizations called the Alliance for Fair Board Recruitment (AFBR) that launches legal attacks on “efforts to apply diversity goals or requirements to corporate boards” and the American Alliance for Equal Rights (AAER), both of which are 501(c)(3) non-profit organizations that Blum founded in 2023.

169. See, e.g., Barnes, supra note 159 (describing Blum as having a “soft-spoken and unfailingly polite demeanor”).
170. See MACLEAN, supra note 108, at 210. See also generally COKORINOS, supra note 80. Cf. generally WHITEHOUSE, supra note 83.
171. See COKORINOS, supra note 80, at 6.
172. See Hannah-Jones, supra note 92.
173. COKORINOS, supra note 80, at 6.
174. See Hsu, infra note 221.
175. Barnes, supra note 159.
types of organizations that Blum serially founds are well-funded non-profit organizations\textsuperscript{177} to which opponents of racial diversity, equity, and inclusion can donate money and receive favorable tax treatment of those donations as charitable gifts.

When with the anti-affirmative action organization called Campaign for a Color-Blind America in the 1990s, Edward Blum opposed inclusion-motivated attention to race working with the nation’s then-most prominent opponent and activist against affirmative action policies, a California Republican party operative named Ward Connerly.\textsuperscript{178} In the 2000s, Blum was still active, with Ward Connerly,\textsuperscript{179} vigorously promoting anti-affirmative action—to ban race and women-including affirmative action—ballot initiatives in states across the nation.\textsuperscript{180} These initiatives were given titles that included the term “civil rights” and language that did not mention “affirmative action.”\textsuperscript{181} The phrasing and campaign behind these state efforts confused some proponents of affirmative action, such that they voted for anti-affirmative action initiatives that they substantively opposed.\textsuperscript{182} Another important part of Blum’s identity that he keeps hidden, much as Simon hid his true identity as a loyal Greek soldier executing a liar role integral to


\textsuperscript{178} Ward Connerly was a close associate of former Republican California Governor Pete Wilson, a chief fundraiser for the California Republican party, and a major operative in efforts to amend several state constitutions through voter initiatives to enact state anti-affirmative action laws such as California Proposition 209. \textit{COKORINOS, supra} note 80, at 32, 37–39. Connerly is a fierce attacker of race affirmative action and leader of several anti-DEI organization including the American Civil Rights Institute and the American Civil Rights Coalition. Id.


\textsuperscript{180} Edward Blum, \textit{A Question for McCain}, AEI (July 25, 2008), https://www.aei.org/articles/a-questions-for-mccain/ (advocating that voters amend the state constitutions in Colorado, Nebraska, and Arizona to add language stating that “[t]he state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting”).

\textsuperscript{181} See West-Faulcon, \textit{supra} note 5, at 1091 (explaining that “[in fact, the term ‘affirmative action’ appears nowhere in the] text of state anti-affirmative action laws”).

\textsuperscript{182} Cf. Harriet Chiang, \textit{Judge Wants “Affirmative Action” in Prop. 209 Summary Lungren Must Rewrite Blurb to Add Phrase}, S.F. CHRON., Aug. 2, 1996, at A19 (describing polling reflecting voter support for California anti-affirmative law Proposition 209 was greater because of a lack of clarity in wording of the ballot initiative); Marilyn Kalfus, \textit{Is It a Bias Ban? Battle Lines Are Drawn Over the California Civil Rights Initiative, ORANGE COUNTY REG.} (Jan. 22, 1996) (describing the campaign to get voter support of California Proposition 209 as “implor[ing] voters to ‘realize Dr. Martin Luther King’s dream of a color-blind society’”).
the Trojan horse masterplan, is Blum’s activities in Texas while he was still working as a broker in the Houston office of PaineWebber.183 As the New York Times reported two days after election day in November 1997, Edward Blum was a “prime sponsor” of a Houston version of California’s then-newly enacted state anti-affirmative action law.184

The more accurate description and details of the origin story of Edward Blum lies in the New York Times articles from 1997 that offer a lens into why Blum is particularly suited for his Repression army Sinon-like role. Blum, described repeatedly in news coverage as a “chief” among those attacking affirmative action policies in the city of Houston, tried desperately to use the Bolick blueprint for attacking affirmative action but was foiled by then-Houston Mayor Bob Lanier and the city council.185 Media coverage of the likelihood of success of the Blum-based Proposition A anti-affirmative action law focused on how its wording differed from state anti-affirmative action laws like California’s successful Proposition 209 (Prop 209). Specifically, like California voters, Houston voters who were polled said that they valued antidiscrimination and a majority of them could only be convinced to vote for anti-affirmative action laws if they were misleadingly packaged as civil rights laws.186

Taking advantage of the majoritarian support for protecting civil rights and racial inclusion, the opponents of affirmative action who conceived and backed Prop 209, the first proposed anti-affirmative action law, gave it the misleading ballot title of the “California Civil Rights Initiative.”187 The purposefully confusingly named ballot initiative passed by a slim 54 percent majority in California on November 5, 1996.188 Another drafting strategy that confused California voters and obscured the anti-affirmative action purpose of the proposed law change among voters was that much of the text—the wording—of the California anti-affirmative action ballot proposal was written by its sponsors to intentionally mirror the text of the Civil Rights Act of 1964.189 It was this voter-confusing California Civil Rights Initiative—Prop 209—wording that Edward Blum wanted to put on the Houston ballot in 1997.

183. COKORINOS, supra note 80, at 40.
184. Sam Howe Verhovek, Referendum in Houston Shows Complexity of Preferences Issue, A1, N.Y. TIMES (Nov. 6, 1997) [hereinafter Verhovek, Referendum in Houston].
185. Sam Howe Verhovek, Houston to Vote on Repeal of Affirmative Action, Sec.1, page 28, N.Y. TIMES (Nov. 2, 1997) [hereinafter Verhovek, Houston to Vote].
186. See id. See also generally Roopali Mukherjee, Regulating Race in the California Civil Rights Initiative: Enemies, Allies, and Alibis, J. COMM., Vol. 50, Issue 2, June 2000, at 27 (presenting “an analysis of the California Civil Rights Initiative, a ballot measure that won 54% of the popular vote in November 1996 to end affirmative action in California”).
187. Id.
188. Mukherjee, supra note 186, at 27.
189. See, e.g., Verhovek, Houston to Vote, supra note 185.
“On August 20, 1997, Blum filed a petition, signed by 20,565 qualified voters, with the City of Houston Secretary calling for an amendment to the city charter.”190 A few weeks later, the Houston City Council voted to place the proposed charter amendment on the November ballot but also exercised its authority to determine the wording of the proposed amendment to Houston’s city charter.191 In lieu of the initial more civil-rights-associated language Blum submitted, Blum’s Proposition A was presented to the voters of Houston as follows:

Shall the Charter of the City of Houston be amended to end the use of affirmative action for women and minorities in the operation of City of Houston employment and contracting including ending the current program and similar programs in the future?192

Upon the change to the straightforward anti-affirmative action language—a change that made it clear to voters that Proposition A would end affirmative action by the city of Houston in employment and city government contracts with private businesses to perform work for the city, “Blum immediately filed a petition for a writ of mandamus in district court asking the court to order [the City of Houston] . . . [to put the] ballot initiative to the popular vote ‘without alteration.’”193 In his lawsuit, Blum declared that the new initiative language, which included the phrase “end the use of affirmative action,” was “vague, indefinite language, which fails to give voters fair notice of the nature and substance of the proposed charter amendment.”194 Houston’s straightforwardly worded Proposition A anti-affirmative action ballot initiative was rejected by voters on November 4, 1997.195 Two days after the voters of Houston rejected ending affirmative action, the New York Times reported:

191. Id.
192. Id. at 280.
193. Id.
194. Id.
195. Verhovek, Referendum in Houston, supra note 184. Ten years later, it had become widely known that anti-affirmative action activists like Ward Connerly and Edward Blum lost voter initiatives if they were stopped from cribbing language from the Civil Rights Act of 1964 and put before voters initiative language that was clear about ending affirmative action. See, e.g., Legal Battle Over the Wording for the Missouri Civil Rights Initiative, J. BLACKS IN HIGHER EDUC. (Aug. 9, 2007) (explaining “[t]he language used in the [anti-affirmative action] referendum is seen as crucial to its passage” because “[i]n the states where race-sensitive admissions have been banned, the language was similar to what was originally proposed in Missouri” but “polls in those states showed that if the wording were similar to that proposed by the Missouri secretary of state, the referenda would have been defeated”). When the Secretary of State of Missouri change the language of Connerly’s proposed anti-affirmative action ballot initiative to actually mention ending “affirmative action,” Connerly hyperbolically complained that is was “one of the most appalling abuses of a constitutional office I have ever seen” for the official to change the anti-affirmative action ballot initiative to read: “Shall the Missouri Constitution be amended to ban affirmative action programs designed to eliminate discrimination against, and improve opportunities for, women and minorities in public contracting, employment, and education?” Id. (emphasis added).
Houston’s voters have put a surprising brake on a national movement that has often seemed to have the momentum of an unstoppable freight train . . . . Interviews with voters and an analysis of exit polls indicate that the proposal to ban affirmative action here failed because supporters of the policy kept opponents from seizing the rhetorical high ground of equal opportunity and civil rights . . . . the fundamental truth that seems to have emerged from the debate here is that the future of affirmative action may depend more than anything else on the language in which it is framed . . . . Of all the factors, none were more important than the wording change in the ballot, and that is also the factor that could have the most significant national implications. 196

Edward Blum is prominent in this postmortem article about the 1997 victory in favor of affirmative action in Houston. The article reports the analysis of a political scientist who refers to the obscuring initiative language as “the Blum language.” 197 And Edward Blum is quoted by the New York Times as likening the initiative language that made his anti-affirmative action goals clear and understandable to voters to asking voters to vote in favor of “drown[ing] young children and puppies.” 198

Affirmative-action proponents around the nation hailed not just the result of Houston’s vote, but the phrasing of the referendum as a straight up-or-down call on affirmative action, and they said that is the way the question should be put to voters elsewhere.

Its opponents, meanwhile, who are already in court challenging the City Council’s broad rewording as illegal, denounced it as a heavy-handed way of obscuring the principles that were really at stake.

“The language was so misleading and frightening and confusing that that, in our opinion, was the primary reason we lost,” said Mr. Blum, the prime sponsor of Proposition A. “What the City Council did was outrageous,” he said. “I mean, it’s like they rewrote it to say, ‘Should the city of Houston drown young children and puppies?’ At some point, it’s too much.” 199

Having learned his lesson from his defeat in Houston in 1997, Blum appears to have become one of the most disciplined anti-affirmative action storytellers. He seems to never again refer to ending affirmative action as drowning children and puppies and consistently frames himself as a savior of the original vision of the 1960s Civil Rights Movement who lives in

196. Verhovek, Referendum in Houston, supra note 184 (emphasis added).
197. Id.
198. Id.
199. Id.
Maine and seems also to never mention his years of anti-affirmative action activities in Houston.

The aspects of Blum’s years in Houston that he leaves out of his personal narrative include his resignation from PaineWebber to become a full-time anti-affirmative action activist\(^{200}\) after working as a stockbroker for seventeen years and the fact that, during some of those years as a working broker, he was heavily engaged in anti-affirmative action political activity as a side endeavor. Other aspects of Blum’s personal narrative that are less reported are that he graduated from the University of Texas at Austin and “was affiliated with Linda Chavez’s Center for Equal Opportunity and Ward Connerly’s American Civil Rights Institute.”\(^{201}\) These types of details about Edward Blum’s identity that his intricate self-descriptive Sinon-like origin story now regularly omits were, prior to him taking on the role as the primary frontman for recent Trojan horse admissions cases, part of how Edward Blum introduced himself.

In 2005 testimony before the U.S. House of Representatives Judiciary Committee, Blum’s prepared statement discouraged the Representatives from voting to reauthorize the Voting Rights Act. Blum’s self-introduction to his testimony against continuation of key features of the landmark 1965 voting civil rights law bore little resemblance to his accidental “one-man”\(^{202}\) crusade persona he is known for more widely today.\(^{203}\) To introduce himself to the U.S. House of Representatives congressional subcommittee comprised of just five members of the U.S. House, a group which included Congressman John Lewis among those five, Blum said:

My name is Edward Blum and I am a Visiting Fellow at the American Enterprise Institute. I am also co-director at AEI with Commissioner Abigail Thernstrom of the Project on Fair Representation. In addition, we are co-authors of a forthcoming book on the evolution of the Voting Rights Act. Prior to my AEI affiliation, I have held a number of positions at other think tanks including the Center for Equal Opportunity, the American Civil Rights Institute, and the Campaign for a Color-Blind America, Legal Defense and Education Foundation. While at the Campaign, I directed the legal challenge to over a dozen

\(^{200}\) COKORINOS, supra note 80, at 40.

\(^{201}\) JBHE Weekly Bulletin, Right-Wing Group Files Complaint About the Race-Sensitive Admissions Program at the University of Texas at Austin, J. BLACKS IN HIGHER EDUC. (Aug. 9, 2007), https://www.jbhe.com/latest/index080907.html [https://perma.cc/6WMB-UUPG]. “In October 2000[,] the American Civil Rights Institute acquired Edward Blum’s Texas-based Campaign for a Color Blind America, creating a new division called American Civil Rights Institute, Legal Defense Fund.” COKORINOS, supra note 80, at 40.


\(^{203}\) Cf., e.g., Park & Penner, supra note 135.
racially gerrymandered voting districts in states from New York to Texas.\textsuperscript{204}

Next, Edward Blum told John Lewis and the rest of the House subcommittee:

It is my opinion that now section 5 \[of the Voting Rights Act\] should be sunsetted. It is creating more mischief than it is actually doing good. . . . The data we have analyzed are indisputable: the rates of minority participation and the success of minority candidates indicates that minorities in the covered jurisdictions no longer struggle against patterns of discrimination as they go about exercising their political rights. . . . Congress shouldn’t renew section 5 based upon a fear that without it the covered jurisdictions would return to the practice of disenfranchising blacks and Hispanics. That fear is too speculative and cannot be substantiated by a congressional factual inquiry.\textsuperscript{205}

Few media reports about Blum mention his lobbying and the substance of this 2005 congressional testimony opposing the reauthorization of the Voting Rights Act. Seemingly with little independent investigation\textsuperscript{206} and without substantial interrogation,\textsuperscript{207} news agencies disseminate Blum’s Sinon-like story that he was first motivated to attack the landmark voting rights law because of a failed run for Congress in the 1990s,\textsuperscript{208} not because he is part of the large network of Republican policy opponents of voting rights protections for people of color. What makes his 2005 congressional subcommittee testimony particularly illuminating of the falsehood of Blum’s refrain that he is engaged in a campaign to restore the original vision of the 1960s Civil Rights Movement is that, in a hearing

\textsuperscript{204} H.R. Subcomm. on Voting Rights Act: Section 5, supra note 168 (including introductory statement of Congressman Chabot starting the hearing by observing “[w]e’re fortunate to have with us today the distinguished gentleman from Georgia, Congressman John Lewis, Congressman Lewis has been a leader for many, many years in the civil rights movement in this country, was a close friend of Dr. King and was one of the people who was there from the start, has been a key force in the Voting Rights Act and its successes in this country”); see also Edward Blum, Section 5 of the Voting Rights Act, AM. ENTER. INST. (Oct. 25, 2005), https://www.aei.org/research-products/testimony/section-5-of-the-voting-rights-act-2/ [https://perma.cc/H59T-NMJR].

\textsuperscript{205} H.R. Subcomm. on Voting Rights Act: Section 5, supra note 168.

\textsuperscript{206} Here, I refer to the majority of media coverage of Edward Blum prior to roughly 2023. For examples of the atypical articles that interrogated Blum’s “story,” see Nathan-Kazis, supra note 159; Nikole Hannah-Jones, What Abigail Fisher’s Affirmative Action Case Was Really About, PROPUBLICA (June 23, 2016), https://www.propublica.org/article/a-colorblind-constitution-what-abigail-fishers-affirmative-action-case-is-r [https://perma.cc/D76U-MAND]. “He’s says he’s trying to do it[—]restore ‘the original vision’ of the civil rights movement—[b]y hobbling the Voting Rights Act and dismantling affirmative action. In recent years, more accounts mention Blum’s role in eviscerating the landmark Voting Rights Act of 1965.” Nathan-Kazis, supra note 159.

\textsuperscript{207} Cf., e.g., Park & Penner, supra note 135 (describing media articles referring to Blum as a “one-man” campaign against affirmative action).

\textsuperscript{208} See, e.g., Smith, supra note 158.
with a singular hero and leader of that movement, Blum chose to ignore that individual and his viewpoint altogether.

Instead of supporting the vision of a 1960s civil rights leader speaking in the same hearing room where Blum himself testified, Blum lobbied against a key vision of the American Civil Rights Movement in the face of that individual, U.S. Congressman John Lewis. Above all civil rights activists, Lewis is the most well-recognized of all of the nonviolent protesters who, as a 25-year-old young man, participated and was injured during the Selma-to-Montgomery march that came to be known as “Bloody Sunday.” Blum’s 2005 testimony before Congress argued that racism was no longer a major issue in America and, thus, that the Voting Rights Act need not be reauthorized. In his testimony, Blum invoked violently racist public safety commissioner “Bull Connor”—a man very much like the racist and violent Sheriff Jim Clark who contributed to the vicious gassing and beatings of marchers on the Edmund Pettus Bridge that left Lewis with a fractured skull. Blum’s position that the Voting Rights Act was unnecessary in 2005 was the position that Lewis adamantly opposed at the same hearing. At the hearing where Blum testified, civil rights leader and Congressman Lewis stated:

We’ve come a long way, and that is true. We’re not the same Nation that we were 40 years ago, but it’s clear today that we have not come

209. JOHN LEWIS, WALKING WITH WIND: A MEMOIR OF THE MOVEMENT 340–45 (1998); see also Bodroghkozy, supra note 70.
210. H.R. SUBCOMM. ON VOTING RIGHTS ACT: SECTION 5, supra note 168 (Edward Blum testifying that “today however, the data simply do not support a similar finding [of rampant racial discrimination in the election arena aimed at blacks]”).
211. See LEWIS, supra note 209, at 344 (“The images were stunning—scene after scene of policemen on foot and on horseback beating defenseless American citizens.”). “Jim Clark’s voice could be heard clearly in the background: ‘Get those goddamned ni**ers! He yelled. “And get those goddamned white ni**ers.” Id.
212. Blum’s testimony before a subcommittee hearing at which John Lewis was present illuminates the falsity of Edward Blum’s narrative that Blum’s own anti-civil rights life’s work is an effort “to reto the original vision of the civil rights movement.” Blum was not among the several people at the hearing who acknowledged Lewis’ stature and status as a civil rights hero and icon on the very issue before the subcommittee—voting rights. In fact, Blum pointed to Lewis’ own status as an elected official as one of the reasons the Voting Rights Act need not be reauthorized when Blum said of Georgia, the state in which the congressional district that John Lewis served is located, “[e]stimates of racial voting patterns in Georgia congressional races held during the last fifteen years or so show African American candidates consistently polling thirty or more percent of the white vote and ninety or more percent of the black vote.” Id. After this, Edward Blum said, in the presence of John Lewis, “What can we conclude from these data? To quote from a recent law review article, ‘Bull Connor is dead.’ And so is every Jim Crow-era segregationist intent on keeping blacks from the polls.” Id. Additionally, Jim Clark, the racist sheriff whose posse was responsible for the brutality on “Bloody Sunday” was alive when Blum made this statement in 2005 and Clark was still so unrepentant about his actions on that Sunday that “he told The Montgomery Advertiser” in 2006 that “Basically, I’d do the same thing today if I had to do it all over again.” Margalit Fox, Jim Clark, Sheriff Who Enforced Segregation, Dies at 84, N.Y. TIMES (June 7, 2007), https://www.nytimes.com/2007/06/07/us/07clark.html.
far enough. Section 5 [of the Voting Rights Act of 1965] is still needed.

Today, section 5 prevents discrimination and redistricting and changes that move voting locations out of minority neighborhoods into less accessible areas. These are issues that are different from the fight to register to vote but they are no less fundamental.

Recently, in Georgia, we have seen just how frail our gains are. As you know, Georgia adopted a voter ID law that required Government-issued photo identification to be presented at the polls. It reduced from 17 to 6 the type of IDs that are accepted at the polls. This has effected a poll tax and will have a disparate impact on the Georgia African American citizens.213

Far from restoring John Lewis’ vision of the Voting Rights Act of 1965 that Lewis declared was still crucially needed in 2005, Edward Blum quested to destroy the law that the March 1965 senseless and racist beating of Lewis in Selma spurred White Americans to support. When he testified that day, Blum revealed no interest in Lewis’ vision of the voting rights law and Blum did not echo the remarks of others at the hearing who acknowledged the significance of Lewis’ stature in relation to the Voting Rights Act. To the contrary, five years later, Blum was instrumental in the 2010 filing of the Shelby County v. Holder214 legal attack on the important voting rights legislation.215 And, today, Blum is regularly credited in news articles with gutting the Voting Rights Act of 1965 through his role in instigating the lawsuit that resulted in the Supreme Court’s 2013 ruling in Shelby County.216 The product of the effort of members of the U.S. Congress to correct the damage that Blum’s Shelby County217 case did to diminish the contemporary voting rights and voting access of Americans, particularly African Americans and other non-White voters, is a proposed legislative fix named after the Congressman.218 To repeat, far from restoring Lewis’ vision, Blum was at the center of an attack on Lewis’ legislative legacy that was so successful that the bill proposed and named after

213. H.R. Subcomm. on Voting Rights Act: Section 5, supra note 168.
214. 570 U.S. 529 (2013) (rendering Section 5 effectively inoperable by ruling that Section 4(b) coverage formula was unconstitutional).
215. See id.; see also Complaint, Shelby County v. Holder, No. 1:10-cv-00651 (D.D.C. Apr. 27, 2010).
216. 570 U.S. 529 (2013); see, e.g., Savage, supra note 160 (describing Blum’s “victory in the 2013 Voting Rights Act case, Shelby County vs. Holder” as something “liberal civil rights advocates” “still resent”).
217. Id.
Lewis—the John Lewis Voting Rights Act, drafted in response to the Supreme Court’s decision in *Shelby County* that Blum takes credit for instigating—has yet to garner enough votes to be enacted as law.\(^{219}\)

Further demonstrating Blum’s Sinon-like role parroting of the terminology and reasoning set forth in Bolick’s blueprint in *Changing Course*,\(^{220}\) Blum’s story, repeated again and again in the news, is that he is attacking inclusion-motivated attention to race because he is restoring “the original principles of our nation’s civil rights movement.”\(^{221}\) An excellent example of Blum using Bolick’s co-opting of the civil rights morality and language strategy employed by activists like John Lewis in the 1960s is how Blum framed and marketed the *Fisher v. Texas*\(^{222}\) Trojan horse case. Blum told an impudent lie about the 2008 rejection of a White Texas high school student named Abigail Fisher. Blum’s lie was that what happened to Fisher was properly likened to the racism experienced by a man named Heman Sweatt in the 1940s.\(^{223}\) Under a Texas whites-only law applicable to admission to the state’s public law school, the fact that University of Texas President Theophilus Painter deemed Heman Sweatt qualified to attend and wanted to admit him to the law school was of no consequence—Sweatt and every other person who shared his racial identity as African American was barred by Texas state law from ever attending the law school.\(^{224}\)

Telling a narrative carefully crafted to falsely equate the real racism of Heman Sweatt’s exclusion in 1946 and the nondiscriminatory factual circumstances\(^{225}\) surrounding Abigail Fisher’s non-admission to UT Austin in 2008 ignores the doctrinal and historical importance of the landmark *Sweatt v. Painter*\(^{226}\) case. It is against this backdrop of Blum’s outrageous

\(^{219}\) Id.

\(^{220}\) See Bolick, supra note 112, at 63.


\(^{222}\) 579 U.S. 365 (2016) (*Fisher II*).

\(^{223}\) SCOTUSblogoncamera, supra note 82.


false equivalency storytelling that it is revealed how vital a Sinon-like role Blum has played over the past decades and how integral figures like Blum are to the overarching Repression army war plan to install a new legal regime that destroys inclusion-motivated considerations of race in either courts of law or in the hearts and minds of a majority of Americans. In the Repression army, it is Blum whose role it has been to convince Americans to unknowingly accept within the purported gift of Trojan horse admissions lawsuits—a dangerous and pernicious lie—that racial justice and inclusion of non-Whites is racism against Whites.

As Sinon conveyed lies of the Greek’s feigned retreat to dampen the Trojan’s well-founded suspicion that the wooden horse was a sham gift with dangerous contents, Blum’s role has been to allay Americans’ collective suspicion of Trojan horse admissions lawsuit attacks on affirmative action. Since the Court’s ruling in SFFA v. Harvard/UNC, Blum’s 2023-created American Alliance for Equal Rights (AAER) group has opted to launch frontal attacks in the upper echelons of legal employment and business—such as Blum’s AAER “suing law firms to stop their diversity fellowships” despite the reality that “[a]bout 5 percent of practicing attorneys are Black” and, in August 2023, AAER also “suing the Fearless Fund, a venture-capital firm founded by two Black women . . . [that] gives small grants to businesses that are at least 51 percent owned by Black women” despite the reality that “Black women receive just 0.34 percent of venture-capital funds in the United States.”

Tellingly, Blum’s organizations’ most recent legal attacks are direct and frontal. If the analogy continues to be apt, Blum is entering the phase of helping his comrades—the Repression army—“take” the “city” of their longtime enemy now that he has assisted the dangerous contents of Trojan horse admissions lawsuits make their exit.

228. Hannah-Jones, supra note 92.
229. See Brief of Appellant at 13, Am. Alliance for Equal Rights v. Fearless Fund Mgmt., LLC, No. 23-13138 (11th Cir. 2023). Perversely, Blum’s AAER organization has sued an entity that seeks to redress centuries of intersectional racism and misogyny using a law that, by its own text, explicitly recognizes that “white citizens” already “enjoy” the gold standard version of rights “to make and enforce contracts” in this nation, which reads in full:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981 (bold and italics emphasis added). As the text of Section 1981, 42 U.S.C. § 1981, makes clear, the U.S. Congress that enacted the statute during the post-Civil War Reconstruction era did so for the purpose of conferring on non-Whites the same contractual rights “enjoyed by white citizens.” The briefs of American Alliance for Equal Rights ignore Supreme Court precedent interpreting this statute as well as the statutes’ purpose, text, and the legislative history and historical context in which Section 1981 was enacted.
As it has been for centuries, the Repression army’s enemy is full inclusion of African Americans and other non-Whites in the American polity and America’s most desirable education, employment, and business opportunities. The Repression army’s multi-century attack has always been an attack on expectations for or a reality that moves towards racial parity for non-Whites, with repression forces particularly opposing laws establishing the expectation of racial parity between Whites and African Americans. Once the Trojans brought the wooden horse inside the city gates and night fell, Sinon helped the dangerous contents—the hidden Greek soldiers—descend from the horse and the gates of Troy were opened to the full Greek army to enter and plunder the city of Troy.

Since the Supreme Court’s ruling in SFFA v. Harvard/UNC, the falsity that any and all inclusion-motivated attention to race is immoral and can be challenged as illegal is plundering the moral view that a majority of Americans have held since the victories of the 1960s Civil Rights Movement. In other words, the idea seeping from Trojan horse cases is degrading Americans’ understanding that it is morally correct to eradicate racism against non-Whites and also morally correct to have U.S. policies and laws that incentivize racial parity instead of virtually whites-only workplaces and educational institutions. If the idea that racial diversity, equity, and inclusion (DEI) is racism against Whites is permitted to exit Trojan horse

230. The legal organization led by former Trump advisor Stephen Miller filed an amicus brief in the AAER v. Fearless Fund. Brief of Amicus Curiae America First Legal Foundation in Support of Plaintiff Appellee at 13, Am. Alliance for Equal Rights, v. Fearless Fund Mgmt., LLC, No. 22-13138 (11th Cir. 2023) (contending that a ruling against AAER’s misinterpretation of the meaning of Section 1981, 42 U.S.C. § 1981, violates the Fourteenth Amendment Equal Protection Clause). Audaciously, Miller’s well-funded America First Legal group has filed a complaint with Equal Employment Opportunity Commission (EEOC) alleging that the Activision Blizzard video game company—an overwhelmingly White male-dominated company—is allegedly engaged in race discrimination against Whites because of its announcement of less than two-year-old race and women-inclusive diversity, equity, and inclusion (DEI) efforts, programs that the Activision Blizzard company first instituted roughly 12 to 18 months ago in the midst of a number of major and highly-publicized sexual harassment scandals and settlements of various state and federal investigations and lawsuits by the SEC, EEOC, and California Civil Rights Department over sexual assault, mistreatment of, and discrimination against women in a “frat boy” workplace culture. See Ty Roush, Activision Blizzard Will Pay SEC $35 Million To Settle Claims, FORBES (Feb 3, 2023); see also, e.g., Lisa Needham, Stephen Miller’s “America First Legal” Is More Dangerous Than You Think, PUB. NOTICE, (Nov. 13, 2023) https://www.publicnotice.co/p/stephen-miller-america-first-legal-explained (describing Miller’s America First Legal as engaged in attacks on race and women-inclusive efforts at virtually all-white workplaces like NASCAR, Activision, mainstream companies like Kellogg’s merely because it has a DEI policy and efforts to compensate Black farmers for racial historic wrongs); Emily Birnbaum, Trump Adviser Stephen Miller’s Legal Group Rakes in $44 Million, BLOOMBERG (Nov. 17, 2023), https://www.bloomberg.com/news/articles/2023-11-17(stephen-miller-s-america-first-legal-group-raises-44-million).

231. Vergil, supra note 130, at 34–35 (recounting that, as the Trojans slept, “the Greek fleet left [the nearby island of] Tenedos . . . and Sinon [secretly] freed the soldiers from [their] pinewood womb, [the] unlatched horse returned them to fresh air . . . [o]pening the gates, they met their friends and joined up as planned. . . . Greeks control the city: Troy falls”).
lawsuits and go unchallenged, the Repression army will be victorious again.

II. THE REPRESSION ARMY’S PAST AND PATH TO FUTURE VICTORY

The earlier flanks of the Repression army included government-sanctioned human traffickers, enslavers, and racist terrorists like the Ku Klux Klan, the Redeemers, and the members of countless other violent and racist organizations. From 1619 to 1865—a time span of 246 years—and from 1877 to 1964—an additional eighty-seven years, the Repression army was winning its war against broadly conceived racial fairness and inclusion of African Americans and other non-Whites. The objective of the Confederacy’s war against the Union was to win so that its government could install an unfettered racial subjugation regime with legalized intergenerational violence and terror-forced labor enslavement of African Americans, legalized rape of enslaved African American women, and other unfathomably inhumane types of racialized mistreatment. Even as Confederate forces surrendered to the Union Army at the end of the American Civil War in 1865, forces began conspiring to maintain white supremacy and deny non-Whites, particularly African Americans, full citizenship rights.

232. See supra note 11 (discussing of trafficking of millions and intergenerational government-supported and protected violent assault and torture-enforced labor captivity of persons of African descent for generation after generation for centuries).

233. Id.

234. See, e.g., FONER, supra note 90, at 342–43.


236. The goal of these repressor forces—or, as they called themselves, “redeemers”—was to destroy “new legal rights and economic opportunities for millions of black Americans” put in place by U.S. Congressional legislation after the Civil War. See Medlin, supra note 235.

237. Id.

238. For well over 250 years and before America was a country, individuals and groups have been waging war against full citizenship, social, political, and economic inclusion of African Americans and persons of color. See, e.g., Dorothy E. Roberts, Abolition Constitutionalism, 133 HARV. L. REV. 1, 19–42 (2018); FRANKLIN, RECONSTRUCTION AFTER THE CIVIL WAR, supra note 90; see also FRANKLIN, THE COLOR LINE, supra note 90.

239. See generally FRANKLIN, FROM SLAVERY TO FREEDOM, supra note 90.

240. Reconstruction spanned from the end of the Civil War in 1865 to 1877. See, e.g., FONER, RECONSTRUCTION, supra note 90, at 582 (“1877 marked a decisive retreat from the idea, born during the Civil War, of a powerful national state protecting the fundamental rights of American citizens.”).
The Reconstruction Era of more realized full citizenship of African Americans, including as elected members of the U.S. Congress and elected state officials took place during a short twelve-year time span between 1865 and 1877. In short, this nineteenth-century period of multi-racial American democracy and inclusivity only lasted for little more than a decade after the end of the Civil War and was, in the century that followed, severely maligned and offered as proof of Black intellectual, social, and civic racial inferiority to Whites. Although the Confederacy and its army surrendered to end the U.S. Civil War in April 1865 at Appomattox, the first-era Repression army remained intact long after that surrender and enjoyed a major victory when the victors in the Civil War—the then-leaders of the United States government—willingly deserted the cause of Reconstruction in 1877.

In the eighteenth century and nineteenth century, the Repression army dehumanized and maintained American enslavement and racial subjugation of African Americans and other non-Whites. Eighteenth and nineteenth-century abolitionists and other advocates for the racial justice policies struggled to stave off the Repression army of their day. Confederate government sympathizer John Wilkes Booth’s assassination of President Abraham Lincoln is a prime example of an act committed by individuals among the forces of the Repression army. Booth’s murder of President Lincoln took place just five days after the Confederate Army surrendered to end the Civil War. John Wilkes Booth, PBS. https://www.pbs.org/kenburns/the-civil-war/john-wilkes-booth. Booth played a tremendously significant role in undermining the First Reconstruction-era. The efforts by proponents of non-Whites citizenship and inclusion to resist the Repression army during America’s first two centuries birthed Reconstruction-era legislative victories, victories made possible by the Union’s victory over the Confederate government’s army, that include the U.S. Congress’ enactment of the Military Reconstruction Acts, the Freedmen’s Bureau Acts, and the Civil Rights Act of 1866, 14 Stat. 27-30 (codified at 42 U.S.C. § 1981 and 18 U.S.C. § 242). See, e.g., Eric Foner, Redemption II, N.Y. TIMES (Nov. 7, 1981), https://www.nytimes.com/1981/11/07/opinion/redemption-ii-by-eric-foner.html [https://perma.cc/A46W-FJ9E] (observing that “[t]he original Reconstruction following the Civil War, blacks were accorded political equality and the Federal Government sought to impose interracial democracy upon the South.”). After Lincoln’s assassination, the Civil Rights Act of 1866 was enacted by an override vote of the U.S. Congress over Andrew Johnson’s presidential veto. See FRANKLIN, RECONSTRUCTION AFTER THE CIVIL WAR, supra note 90, at 206. The Civil Rights Act of 1866 was an important template for the Fourteenth Amendment of the U.S. Constitution. Contemporary repression forces are using the Civil Rights Act of 1866 to repress racial diversity, equity, and inclusion in highly desirable and high-paying employment sectors. See, e.g., DEI Opponents Using an 1866 Civil Rights Law to Challenge Equity Policies in the Workplace, N.Y. POST (Jan. 14, 2024), https://nypost.com/2024/01/14/news/dei-opponents-are-using-a-1866-civil-rights-law-to-challenge-equity-policies-in-the-workplace/ [https://perma.cc/M33C-W4EL].

241. See, e.g., FRANKLIN, RECONSTRUCTION AFTER THE CIVIL WAR, supra note 90, at 219.


243. The U.S. Supreme Court’s role in undermining Reconstruction by its incorrectly narrow interpretations of the Constitution’s three Reconstruction Amendments—the Thirteenth, Fourteenth, and Fifteenth Amendments—cannot be overstated. C.f. The (Anti-)Civil Rights Cases of 1883, 109 U.S. 3 (1883); United States v. Harris, 106 U.S. 629 (1883); United States v. Cruikshank, 92 U.S. 542 (1875); see also Foner, supra note 242 at 1592. The Court struck down important federal laws enacted by Congress during Reconstruction and thus contributed significantly to the repression of citizenship.
The 1950s-era forces of the Repression army illegally resisted the U.S. Supreme Court’s interpretation of the Equal Protection Clause in *Brown v. Board of Education*. For all the decades that have followed until today, such forces have intellectually, legislatively, and judicially attacked contemporary federal civil rights laws enacted by Congress since the 1960s. Reconstruction-era historian Eric Foner considers the passage of major civil rights legislation like the Civil Rights Act of 1964 and the Voting Rights Act of 1965 markers of the start of America’s “Second Reconstruction” and Foner marks its end in 1981, making the period of the Second Reconstruction the seventeen years between 1964 and 1981. Since the 1970s, the Repression army has made opposition to race affirmative action in employment, education, and government contracting and attacks on legislation and policies designed to redress systemic and structural forms of racism a cornerstone of their opposition movement and anti-civil rights policy fight. However, its organized tactics and extraordinary funding sources have been stealthily camouflaged.

Over the last five decades, Trojan horse admission lawsuits have been central and successful in obscuring the nature of the Repression army’s goal of making inclusion-motivated attention to race categorically illegal by degrading interpretations of the three Reconstruction amendments and interpretations of civil rights legislation to satisfy their racial justice repression objectives. The Repression army’s opposition to the Civil Rights Act of 1964 and the Voting Rights Act of 1965 is now a roughly seventy-year-old project. With multi-billionaires funding the Repression army’s multitudes of similarly named 501(c)(3) repress and race exclusion non-profit organizations, the prospect of their victory in their long war against racial diversity, equity, and inclusion (DEI),
affirmative action, and systemic racism-focused provisions of the Civil Rights Act of 1964 seems increasingly likely. This is particularly true if the falsehoods and legal goals hidden inside Trojan horse admissions lawsuits go unrecognized as they exit to do even greater harm.

Until recently, few Americans knew a billionaire-funded multi-decade attack on the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968 has been underway since the 1970s. That has changed in the months since the June 2023 ruling in the SFFA v. Harvard/UNC cases. In the months since, a flurry of letter-writing campaigns threatening litigation, EEOC filings, and lawsuits charging violations of federal laws prohibiting race discrimination in employment and in the right to enter private contracts has spurred significant media coverage of the activities of the contemporary Repression army.249

A. Lie About Racial Inclusion Exiting

The concealed goal of those using SFFA v. Harvard/UNC as a Trojan horse battle tactic is to install a new moral consensus that inclusion-motivated attention to race is immoral racism. Since the Supreme Court’s 1978 ruling in Regents of California v. Bakke,250 opponents of incentivizing educational and employment race inclusion of non-Whites have advanced the falsehood that inclusion-motivated attention to race (“race attentiveness”251 to include African Americans, Latinos, and Asian Americans)252—is anti-White racism. The idea concealed inside the Trojan horse admissions case is the lie that full, fair, and proportionate inclusion of non-Whites is racism against Whites. Accordingly, the SFFA v. Harvard/UNC case is the appealing container employed by the current-day forces for what this Part terms “white predominance”253 to deliver the lie that policies that incentivize proportionate inclusion of non-Whites are racist against Whites. Trojan horse admissions lawsuits aspire to eventually deliver an anti-racial-inclusion interpretation of the Fourteenth Amendment Equal Protection Clause and a timeworn254 and destructive ideology—the lie that

249. See supra notes 227–228 and accompanying text.
251. Cheryl Harris and I have observed that race attentiveness and race inattentiveness can have race-negative results. See Harris & West-Faulcon, supra note 58, at 104.
252. Cf. Bakke, 438 U.S. 265 (ruling in favor of White male applicant denied admission who legally attacked inclusion-motivated race attentive policies in a medical school’s admission policy that guaranteed African American, Latino, and Asian Americans be admitted to 16 of 100 admission slots as an illegal “quota” that failed the narrow-tailoring prong of strict scrutiny).
254. The pernicious lie that the Civil Rights Act of 1964 is racist against White people was openly communicated in the 1950s and 1960s, see PERLSTEIN supra note 90, at 364, and, earlier than
racial inclusion is racism—in an enticing package, without its recipients, the majority of Americans, recognizing we are accepting it.

The SFFA v. Harvard/UNC Trojan horse admissions lawsuit was designed to successfully hide its true intent—to entrench white dominance and disproportionate selection of White applicants in the nation’s most coveted educational institutions and job positions. Thus, the SFFA v. Harvard/UNC case, like prior Trojan horse admission lawsuits, is a battle tactic that advances the Repression army’s morality-shifting goal of convincing a majority of Americans that it is morally virtuous to oppose efforts to include more than token numbers of African Americans and other non-Whites in historically and present-day almost exclusively whites-only educational and employment spaces. Exposing the implicitly anti-Black and white supremacist thinking and assumptions that attackers of affirmative action have hidden inside Trojan horse admissions lawsuits seems the only way to vanquish the centuries-old racial-inclusion-is-racist falsehood that is exiting, like the dangerous hidden Greek soldiers, the SFFA v. Harvard/UNC lawsuit. If the lie goes unchallenged, it will open America to direct frontal attacks by the contemporary Repression army. Once inside the gate, the full corps of the second repressors have a strong chance of repeating the success of their nineteenth-century predecessors in repressing laws, policies, and moral commitment to multi-racial democracy and racial inclusion of African Americans and members of other lower racial caste groups in education, employment, and business opportunities that have long been and are still predominated by Whites.

The idea about the meaning of the Equal Protection Clause that is inside Trojan horse admissions cases is the falsehood that inclusion-motivated race attentiveness is anti-White racism and, thusly, that attention to race for purposes of including non-Whites is immoral. This is a lie. Specifically, it is a lie that obscures the empirical reality of an American racial caste system that situates Whites at the top of the caste hierarchy, African Americans in the lowest racial caste, and other non-Whites in middle racial castes below Whites and above Black Americans.255 This major distinction is crucial to understanding the battle plan of the Repression army seeking to destroy the Civil Rights Act of 1964.

Now that Edward Blum, the Trojan horse admissions cases’ equivalent of the deceptive Greek warrior Sinon,256 has become more widely known, his connection to other Repression army forces is in more open

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256. See supra Part I.C.
view. Since the ruling in SFFA v. Harvard/UNC, a Trump White House advisor—Stephen Miller—has founded an organization that has recently filed six Trojan horse medical school admissions cases in Texas. Blum and media accounts of his campaigns describe his anti-DEI litigation as “work[ing] to remove the consideration of race from other parts of American life and law,” “tak[ing] race out of” college admissions or “tak[ing] race out of” the workplace. Similarly, the industries that Blum’s new American Alliance for Equal Rights (AAER) organization and Miller’s America First Legal have targeted are and have always had very limited inclusion of African Americans and certain other non-Whites. Suing workplaces, that currently predominantly exclude African Americans, for violating civil rights laws enacted for the purpose of incentivizing diverse racial inclusion perpetuates the immoral lie that Edward Blum has freed to exit from where it had been carefully hidden in the Trojan horse SFFA v. Harvard/UNC case.

The lie that inclusion-motivated race attentiveness is racist against Whites is the central idea that fueled the army for white predominance that successfully destroyed the moral authority and legislative gains of the 1870s post-Civil War Reconstruction era. That same lie fuels the contemporary army for white predominance intent on destroying the moral authority and legislative gains of the 1960s Civil Rights Movement. Civil


258. See Kate McGee, In Lawsuit, Student Claims Six Texas Medical Schools Are Illegally Considering Race and Sex in Admissions, TEX. TRIB. (Jan. 10, 2023), https://www.texastribune.org/2023/01/10/texas-medical-school-lawsuits-admissions/ [https://perma.cc/US4W-LC84] (describing Miller as joining forces with “the architect of the state’s six-week abortion ban” to orchestrate the six lawsuits).

259. Garcia-Navarro, supra note 15 (quoting Blum answering a question about what future legal challenges he might have his “eye on” as him planning to next attack inclusion-motivated racial DEI policies “in the employment arena, contracting arena, internships”).

260. See supra notes 226–228 and accompanying text.


262. Civil Rights Cases of 1883, 109 U.S. at 25 (1883); see also supra note 240 (citing United States v. Harris, 106 U.S. 629 (1883); United States v. Cruikshank, 92 U.S. 542 (1875); Foner, supra note 242 at 1592).
and citizenship rights for historically oppressed groups are not “special favoritism,” nor are they “special rights.”

Yet, propagating the lie that anti-racism and racial inclusion are somehow a form of racism against White people is a continuing and contemporary battle tactic that the forces for white predominance employ in addition to, not instead of, frontal overt anti-Black violence and explicitly dehumanizing and racist sentiments such as murdering, lynching, and using racist epithets to describe African Americans. Like the 1883 Supreme Court reasoning that a 1875 federal civil rights law protecting the citizenship rights of African Americans to access commercial establishments open to the general public conferred preferential treatment to Black people—a pernicious nineteenth-century false framing of racial justice for African Americans, reasoning advanced by the SFFA v. Harvard/UNC Trojan horse lawsuit carries a similarly pernicious falsity. Members of the U.S. Supreme Court inserted this false notion in their 1883 ruling on the constitutionality of the Civil Rights Act of 1875 in The Civil Rights

264. In 1883, the Supreme Court falsely equated protection of the civil rights of African Americans under the Civil Rights Act of 1875 as treating African Americans as “special favorites” of the law. The (Anti-)Civil Rights Cases, 109 U.S. 3, 25 (1883) (holding incorrectly that Congress has “no countenance of authority for the passage of the [Civil Rights Act of 1875] law in question [that] can be found in either the Thirteenth or Fourteenth Amendment of the Constitution” and improperly striking the 1875 federal law prohibiting commercial businesses from operating as whites-only as exceeding the scope of Congress’ explicitly textually delineated in U.S. CONST. amend. XIV, § 5, “power to enforce, by appropriate legislation, the provisions of this article”). To avoid confusion, I refer to this decision as “The (Anti-)Civil Rights Cases of 1883” to align with the reality that this case is substantively destructive of—antithetical to—protecting the civil rights of African Americans and other non-Whites. Cynically and unbelievably, in striking down the Civil Rights Act of 1975, the Supreme Court majority characterized a federal civil rights law that had been enacted not even a full decade after America’s initial banning of centuries-long legalized terror-based violence-enforced race-based inter-generational labor enslavement, likened the 1875 civil rights law to “special favoritism” for the racial group trafficked, victimized, brutalized, and held as labor captives for generations under valid federal, state, and local laws. See, e.g., Dred Scott v. Sanford, 60 U.S. (19 How.) 393 (1857) (enslaved party), superseded by constitutional amendment, U.S. CONST. amend. XIV, protecting the practice of legalized enslavement of African Americans. The (Anti-)Civil Rights Cases of 1883, 109 U.S. at 25 (“When a man has emerged from slavery . . . there must be some stage in the progress of his elevation when he takes the rank of a mere citizen and ceases to be the special favorite of the laws.”) (emphasis added).

265. Romer v. Evans, 517 U.S. 620, 631 (1996) (majority opinion holding that “we cannot accept the view that Amendment 2’s prohibition on specific legal protections does no more than deprive homosexuals of special rights”) (emphasis added). However, in his dissent in Romer v. Evans, Justice Antonin Scalia used reasoning eerily similar to that used by the majority in The (Anti-)Civil Rights Cases of 1883, when Scalia draws a false and pejorative equivalency between protecting the civil rights of gay and lesbian persons with what Scalia calls “special treatment of homosexuals,” “special rights,” “special favor,” “special protection.” Id. at 638, 640–42, 647 (Scalia, J., dissenting) (“And a fortiori it is constitutionally permissible for a State to adopt a provision not even disfavoring homosexual conduct, but merely prohibiting all levels of state government from bestowing special protections upon homosexual conduct.”).

266. Foner, Reconstruction, supra note 90, at 342–43.

267. See supra note 264 (discussing the The (Anti-)Civil Rights Cases of 1883).
The SFFA v. Harvard Trojan Horse Admissions Lawsuit contains legal theories, doctrinal goals, and an agenda to shift our national moral view of inclusion-motivated attention to race so that each aligns with the theory, doctrine, and beliefs about the moral value of racial inclusion of African Americans articulated by the U.S. Supreme Court in The (Anti-)Civil Rights Cases of 1883.

The SFFA v. Harvard/UNC Trojan horse admissions lawsuit contains legal theories, doctrinal goals, and an agenda to shift our national moral view of inclusion-motivated attention to race so that each aligns with the theory, doctrine, and beliefs about the moral value of racial inclusion of African Americans articulated by the U.S. Supreme Court in The (Anti-)Civil Rights Cases of 1883. That post-Civil War Supreme Court decision of five consolidated cases struck down the Civil Rights Act of 1875 in an 8-1 vote—the judicial overthrow of Congress’ 1875 legal penalty against White Americans who refused to recognize that the Citizenship and Equal Protection Clauses of the then-new Fourteenth Amendment overruled Dred Scott v. Sanford and conferred full citizenship on American-born African Americans.

Understanding the genesis and strategic value of perpetuating the lie that civil rights laws that treat African Americans and other non-Whites as full and equal citizens are anti-White racism and “special [pro-Black] favoritism” is critical to staving off the contemporary Repression army’s ongoing assault on racial inclusion and multi-racial American democracy. Continuing the Trojan horse analogy, the contents of the SFFA v. Harvard/UNC Trojan horse case are in the midst of opening the gates to the entirety of the Repression army. A prime example is the fact that the Repression army is already installing the lie about racial inclusion into

269. 109 U.S. 3 (1883).
271. The (Anti-)Civil Rights Cases of 1883, 109 U.S. 3 (1883).
employment cases, which propagate the falsity that compliance with racial-inclusion-focused federal laws like Title VII of the Civil Rights Act of 1964 is racist.

B. Supreme Court’s Denial of SFFA’s Ask to Overrule Bakke-Grutter-Fisher Precedent

The SFFA v. Harvard/UNC ruling advances but does not deliver complete victory for the Repression army’s campaign to repress laws and policies that employ inclusion-motivated attention to race. The SFFA v. Harvard/UNC ruling denies the SFFA organizational plaintiff the legal victory of the dramatic change in affirmative action precedent that it sought by crafting a doctrinally narrow opinion. On appeal, the SFFA organization asked the Supreme Court to overturn the Bakke-Grutter-Fisher equal protection rule that permits colleges and universities to justify inclusion-motivated attention to race in admissions on “diversity” grounds. But, contrary to SFFA’s request for a new legal rule, the Supreme Court

274. See, e.g., Tatyana Monnay, Stephen Miller’s America First Legal Sues NYU Over Law Review, BLOOMBERG L. (Oct. 19, 2023), https://news.bloomberglaw.com/business-and-practice/stephen-millers-anti-affirmative-group-sues-nyu-over-law-review [https://perma.cc/MGM6-Z7TQ]. (“AFL, founded by former Trump administration policy adviser Miller, pressured a US civil rights agency to investigate major corporations such as Kellogg Co. and Activision Blizzard Inc. over their diversity policies following the Supreme Court ruling.”); see also Chris Geidner, Stephen Miller’s Group Seeks to Fight “Racial Preferences” with . . . Racial Preferences, LAW DORK (July 25, 2023), https://www.lawdork.com/p/stephen-miller-america-first-legal-diversity [https://perma.cc/AC2M-TT69] (describing similarities and distinctions between Stephen Miller’s America First Legal and Edward Blum’s SFFA organization such as the observation that the America First Legal was explicitly race consciousness in its advertisement in noting “[i]n the accompanying image, however, the organization expressed a racial preference, stating, ‘If you’re Asian, and were denied a job, promotion, or professional opportunity because of your skin color, call AMERICA FIRST LEGAL today . . . ’”); id. (“But America First Legal is taking much more direct—and likely more broad—role in litigating against diversity policies in corporate America, filing complaints against companies with the Equal Employment Opportunity Commission even before the June [SFFA v. Harvard/UNC] decision came down.”).

275. See Khorri Atkinson, Meta-Backed Diversity Program Accused of Anti-White Hiring Bias, BLOOMBERG L. (Sept. 5, 2023), https://news.bloomberglaw.com/daily-labor-report/meta-backed-diversity-program-accused-of-anti-white-hiring-bias [https://perma.cc/85PA-M76B] (quoting America First Legal senior counsel Reed D. Rubinstein as saying “[t]he Defendants, with their morally twisted ‘woke’ view that racism, bigotry, and sexism actually are perfectly fine whenever they decide it to be so, have arrogantly declared themselves above the law”). The organization founded by Stephen Miller, America First Legal, has urged the U.S. Equal Employment and Opportunity Commission (EEOC) to investigate racial DEI programs for violating federal civil rights laws. Id. These America First Legal lawsuits and EEOC complaints rely on Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1866. The perversity of the use of the Civil Rights Act of 1866 in this manner has been observed by some news outlets. See, e.g., Julian Mark, A Law That Helped End Slavery Is Now a Weapon to End Affirmative Action, WASH. POST (Nov. 6, 2023), https://www.washingtonpost.com/business/2023/11/06/civil-rights-act-1866-dei-affirmative-action/ [https://perma.cc/F6V8-WX49].

applies the pre-existing strict scrutiny legal test to Harvard and UNC’s diversity-justified consideration of race in admissions. In **SFFA v. Harvard/UNC**, the Court observes that:

The Court’s analysis [in the *Grutter* case] tracked Justice Powell’s [analysis in the *Bakke* case] in many respects. As for compelling interest, the Court held that “[t]he Law School’s educational judgment that such diversity is essential to its educational mission is one to which we defer.”

In Section A of Part IV of the *SFFA v. Harvard/UNC* ruling, the Court applies the *Bakke-Grutter-Fisher* strict scrutiny legal test to the four diversity “interests” named by Harvard and the five diversity “interests” identified by UNC. SFFA wins and the two universities that SFFA sued—Harvard and UNC—lose because the Court concludes that the “diversity interests” asserted by Harvard and UNC are, in the words of the Court, “not sufficiently coherent for purposes of strict scrutiny” and because the “interests that respondents seek, though plainly worthy, are inescapably imponderable.” Specifically, *SFFA v. Harvard/UNC* does not hold that race-based affirmative action is *per se* illegal. Thus, the ultimate doctrinal goal sought by the SFFA organization in the *SFFA v. Harvard/UNC* Trojan horse case—installation of a novel and perverse interpretation of the Equal Protection Clause of the Fourteenth Amendment that singles out inclusion-motivated race attentiveness for categorical prohibition while police and punishment-motivated race attentiveness remains subject to means-ends analysis—has not been realized.

Still, the majority opinion in *SFFA v. Harvard/UNC*, authored by Chief Justice John Roberts on behalf of a six-justice majority, is a window...
The SFFA v. Harvard/UNC majority ruling aids the promulgation of the immoral lie about racial inclusion embedded inside the Trojan horse admissions case. Distinguishing between the legally binding and doctrinally consequential portions of the SFFA v. Harvard/UNC ruling and dicta is nuanced in some instances and straightforward in others. When Supreme Court justices seek to proselytize those reading their opinions into taking a particular moral view of what is morally right or wrong, this is an example of dicta. The Supreme Court is the ultimate arbiter of the meaning of the U.S. Constitution and interpreter of federal statutes and regulations. It is not, however, authorized to be an arbiter of good or bad policy judgments. This is particularly true on the issue of what does and does not constitute racism. The Constitution empowers the Court with the utmost legal interpretive authority and the power of judicial review, but, it does not, however, confer on the Court any sort of supreme moral authority to decide for the nation what is and is not racist.

To offer a contrast to the SFFA v. Harvard/UNC majority ruling’s framing of the Harvard and UNC admissions policies as racist, the definition of “racism” adopted in a February 2021 resolution of the American Psychological Association (APA) is illustrative. The Supreme Court fails to acknowledge the overwhelming white predominance at the institutions that the six-justice majority accuses of discrimination against Whites, a racial group that predominates at Harvard and UNC-Chapel Hill in student enrolment and in the faculty. The APA definition of racism states:

Racism is a system of structuring opportunity and assigning value based on phenotypic properties (e.g., skin color and hair texture associated with “race” in the U.S.). This “system”—which ranges from daily interpersonal interactions shaped by race to racialized opportunities for good education, housing, employment, etc.—unfairly disadvantages people belonging to marginalized racial groups and damages their health and mental health, unfairly advantages individuals belonging to socially and politically dominant racial groups, and “ultimately undermines the full potential of the whole society” (C.P. Jones, 2003).
The APA resolution also describes the “four levels of racism”: (1) structural racism, (2) institutional racism, (3) interpersonal racism, and (4) internalized racism.\footnote{Id. at 2–3.} The APA’s definition and description of “racism” stands in stark contrast to the notion that a racial group that sits atop the American racial caste system is, in the context of admissions to universities that are predominantly White, a victim of race discrimination in the manner the falsehood the Repression army behind Trojan horse admissions lawsuits conveys to open the gates of America to the repression of civil rights and inclusion of African Americans and other non-Whites.

Without explicitly using the word “racism,” \textit{SFFA v. Harvard/UNC} conveys a viewpoint about the moral fairness—the moral propriety—of the attention to race employed in some components of the Harvard and UNC-Chapel Hill processes for selecting 2014 freshman students. The overriding implication of the opinion is that Harvard and UNC-Chapel Hill “take an applicant’s race into account”\footnote{Id. at 194 (2023).} in order to make race “a determinative tip for ‘a significant percentage’ of all admitted African American and Hispanic applicants.”\footnote{Id. at 195.} Instead of focusing on the use of race as an inclusion-motivated “plus” for historically excluded racial groups such as African Americans, Latinos, and some Asian Americans, the \textit{SFFA v. Harvard/UNC} majority opinion erroneously implies that Harvard and UNC consider race in admissions “to discriminate against those racial groups that were not the beneficiaries of the race-based preference.”\footnote{Id. at 212 (italics in original).}

Overall, the Court’s description of Harvard’s admissions policy is set forth in a manner that misleadingly suggests that the trial court who heard testimony and entered factual findings on the operation of Harvard’s admissions policy concluded Harvard considered race in admissions to favor of underqualified African American and Latino applicants.

The trial court’s factual findings contradict the Supreme Court majority’s false implication that Harvard’s inclusion-motivated attention to the race of applicants from racial groups such as African Americans and Latinos—groups historically admitted in only token numbers without affirmative action—is racist against racial groups that make up the overwhelming majority of students admitted to Harvard. Significantly, the Court majority only quotes a subpart of the trial court’s findings regarding the Harvard admissions process without including a key point that the trial court explicitly noted to disavow the conclusion that affirmative action resulted in the selection of underqualified non-Whites.
The trial court findings of fact ruling states that “[this] Court notes that Harvard’s current admissions policy does not result in underqualified students being admitted . . . rather . . . race impacts who among the highly-qualified students in the applicant pool will be selected for admission . . . .”294 The first way the majority opinion perpetuates the falsehood that inclusion-motivated attention to race is harming innocent White and Asian American applicants is by describing the mechanism of inclusion-motivated race consciousness in a manner that suggests that the Asian Americans and Whites who are not being selected are highly-qualified while the African American and Latinos who are admitted are lesser qualified in comparison.

The trial court made two additional observations that, first, the Harvard freshman class “is too small to accommodate more than a small percentage of those qualified for admission,”295 and, second, that the racial “tip” is only determinative of “who among the highly-qualified students” will be selected.296 Later in the same ruling, the trial court finds:

The plus-factor or tips that Harvard employs to achieve racial diversity for its educational mission are not nearly as large. Additionally, the magnitude of race-based tips is not disproportionate to the magnitude of other tips applicants may receive. The effect of African American and Hispanic racial identity on an applicant’s probability of admission has been estimated at a significantly lower magnitude than tips offered to recruited athletes . . . .

Finally, the magnitude of race-based tips as indicated by the relative academic qualifications of admitted minority students at Harvard is modest. Every student Harvard admits is academically prepared for the educational challenges offered at Harvard . . . .297

Instead of quoting these portions of the trial court’s findings of fact, the Supreme Court’s SFFA v. Harvard/UNC ruling feeds the falsehood that inclusion-motivated attention to race is racist. An emblematic example of how the Court’s ruling perpetuates the falsity that race inclusion is racist is easily missed but powerful if examined closely. In SFFA v. Harvard/UNC, the Supreme Court lifts up a non-doctrinal and non-legal personal view about what makes for a “sad day” based on a statement from a

294. Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll., 397 F. Supp. 3d 126, 178 (D. Mass. 2019) (emphasis added), rev’d, 600 U.S. 181 (2023). To be clear, inclusion-motivated attention to race does result in attention to the race of members of racial groups that have been historically disproportionately excluded in admission to the institution seeking to consider race for the purpose of inclusion—that is, frankly, how race affirmative action acts affirmatively.
295. Id.
296. Id.
297. Id. at 199.
1977 opinion article in a bar association magazine called the CBA (Chicago Bar Association) Record. The idea communicated by the bar association magazine article that the Supreme Court majority includes in one of its citations in its SFFA v. Harvard/UNC ruling is an assertion that “it would be a sad day” if “each identifiable minority” were to one day have “proportional representation in every desirable walk of life.”

The Supreme Court’s citing of authors of a magazine article who find proportional inclusion of a diversity of non-White racial groups in all of America’s coveted educational, employment, and business opportunities—full inclusion of all races “in every desirable walk of life”—to portend a “sad” future for our nation is animated by the lie that racial inclusion is racist, the very lie this Article argues that the SFFA v. Harvard/UNC Trojan horse case was designed to transport as pernicious hidden cargo. To endorse the assertion that it is “sad” to disrupt the White racial group’s historically and currently disproportionately large and predominant share of the most coveted opportunities and privileges in “every desirable walk of life” is a non-legal personal viewpoint and dicta, not Supreme Court legal analysis. Far from celebrating the moral ideals of racial inclusion, the Supreme Court’s inclusion of this obscure article’s artfully-worded articulation of a policy preference for white predominance over full and proportionate inclusion of all racial groups endorses the falsity that racial inclusion is “sad,” or, in other words, immoral and unfair to the White racial group.

C. Blindness to White Predominance in SFFA v. Harvard/UNC Ruling Fuels Lie

Based on a problematic personal preference for white predominance over racial inclusion in desirable life situations similar to that which the Court’s SFFA v. Harvard/UNC opinion endorses by its citing of the bar association magazine article discussed above, the majority’s opinion exhibits a willful blindness to the empirical fact that the University of North Carolina at Chapel Hill (UNC-Chapel Hill) and Harvard are historically and currently predominantly white institutions, with overwhelmingly White student bodies and faculties. This blindness on the part of the Court fuels the lie that inclusion-motivated attention to race is racist. Ignoring the demographic white predominance at both institutions, the Supreme Court’s 2023 opinion in SFFA v. Harvard/UNC implies Harvard and UNC
employ affirmative action to be racist against the White racial group that has historically been and remains currently dominant at both universities.\footnote{301}{Cf. id. at 230 ("For the reasons provided above, the Harvard and UNC admission programs cannot be reconciled with the guarantees of the Equal Protection Clause.").}

Compiled using Fall 2022 data, the charts below show the white predominance in the undergraduate student bodies and the faculties of both Harvard and UNC-Chapel Hill. The typical White undergraduate student enrollment at UNC-Chapel Hill is about 11,000 White students.\footnote{302}{Analytic Reports: Student Characteristics, UNC OFF. OF INST. RSCH. & ASSESSMENT (Feb. 9, 2024), https://oira.unc.edu/reports/ [https://perma.cc/MAA3-Z3QP].} That is nearly double the number of all non-White students combined. The next highest enrollment of a racial group at UNC-Chapel Hill is 2,500 Asian American students while the Latino/“Hispanic” student enrollment is around 1,800.\footnote{303}{Id.}

Finally, Black and/or African American undergraduate student enrollment at UNC-Chapel Hill is around 1,600 African American students.\footnote{304}{Fact Book: Student Enrollment, HARV. UNIV. OFF. OF INST. RSCH. & ANALYTICS (Jan. 16, 2024), https://oira.harvard.edu/factbook/fact-book-enrollment/#enr_race [https://perma.cc/7KPM-NDPR].} White undergraduate student enrollment at the smaller Harvard is typically 2,400 White students.\footnote{305}{Id.} The number of Harvard undergraduate White students is over thirty percent more than the number of Asian American students enrolled and also over thirty percent more than the number of African American and Latino Harvard undergraduate students combined. The next highest enrollment of a racial group at Harvard is 1,600 Asian American students.\footnote{306}{Id.} The next highest is the Latino/“Hispanic” student enrollment number of around 850.\footnote{307}{Id.} Finally, Black and/or African American undergraduate student enrollment at Harvard is around 650 Black/African American students.\footnote{308}{Id.}

Also using Fall 2022 data, undergraduate and graduate faculty numbers reveal a striking degree of white predominance as well. The tenured White faculty at UNC-Chapel Hill is around 1,060 White tenured professors.\footnote{309}{Current Faculty Characteristics: Race/Ethnicity Trends, UNIV. N.C. CHAPEL HILL OFF. OF INST. RSCH. & ASSESSMENT (Sept. 11, 2023), https://oira.unc.edu/reports/ [https://perma.cc/MAA3-Z3QP].} There are 95 percent more White tenured professors at UNC-Chapel Hill than Asian American tenured professors, the next highest racial group. There are about 156 Asian American tenured UNC-Chapel Hill professors.\footnote{310}{Id.} There are nearly 1,000 more tenured White UNC-Chapel
Hill professors than the sixty-eight Black tenured UNC-Chapel Hill professors. There are also very close to over 1,000 more tenured White UNC-Chapel Hill professors than the sixty-three Latino tenured UNC-Chapel Hill professors. The level of white dominance among tenured professors at Harvard is similarly clear. There are around 1,700 White Harvard faculty of all ranks (tenured, tenure-track, non-tenured) but only 310 Asian American Harvard faculty, 131 African American/Black Harvard faculty, and only 109 Latino/“Hispanic” Harvard faculty.

311. Id.
312. Id.
Historical white predominance at UNC-Chapel Hill and Harvard is overwhelming and equally clear. UNC-Chapel Hill was “literally built” by enslaved persons of African descent and was whites-only “for the first 156 years of its existence.” White students have been predominant in the student body at UNC-Chapel Hill since its 1795 opening with forty White students. UNC-Chapel Hill vigorously litigated against the admission of African Americans who sought admission to its law school and only admitted four African American law students in 1951 after review of its appeal of the order requiring the students’ admission was denied by the U.S. Supreme Court. Even as the four African American law students were admitted, the University of North Carolina Board of Trustees adopted a 1951 resolution to retain whites-only undergraduate enrollment at UNC-Chapel Hill and to only admit “a select number of Black students at the graduate level.” UNC-Chapel Hill did not voluntarily comply with the Supreme Court’s 1954 ruling in Brown v. Board of Education. Only after losing a lawsuit filed against the University of North Carolina Board of Trustees by three high school students informed “that they were not eligible for admission to undergraduate programs, because the Board of Trustees had ‘not yet changed the policy for admission of negro


318. Id. (“[O]n July 8, 1955, President Gray notified the Chancellors at the three colleges of the draft letter that was to be used to decline Black applicants, which emphasized the policy that if an equal degree was available at a Black institution, then they were not obliged to offer admission.”). After denying the appeals of three African American students from the city just a few miles from the whites-only UNC-Chapel Hill campus, the UNC Board of Trustees adopted a resolution on May 23, 1955 “to keep undergraduate programs [whites-only] segregated” at the campus at Chapel Hill (now the University of North Carolina at Chapel Hill), North Carolina State College (now North Carolina State University at Raleigh), and Women’s College (now the University of North Carolina at Greensboro). Id. at 81 (quoting the 1955 UNC Board of Trustees resolution stating “it is HEREBY DECLARED to be the policy of the Board of Trustees of the consolidated University of North Carolina that applications of Negroes to the undergraduate schools of the three [whites-only campus] branches of the consolidated University be not accepted”).

students,” did the Chapel Hill campus admit three African American male high school students as the first undergraduate students to attend UNC-Chapel Hill. After admitting three African American students upon federal court order in 1955, UNC-Chapel Hill defied the spirit of the Brown interpretation of the Fourteenth Amendment Equal Protection Clause by keeping the campus whites-only for all practical purposes—its admission of only “four black freshmen [out of nearly 1,700 total freshmen] in 1960 and only eighteen [out of nearly 2400 total freshman] in 1963” is extreme white-enrollment predominance.

A text box titled African-Americans at the University of North Carolina at Chapel Hill from the Bicentennial (1793–1993) Edition of the UNC-Chapel Hill Fact Book further illuminates UNC-Chapel Hill’s distant and recent history as a state taxpayer-funded whites-only university by noting that 1969 was the first year that more than a handful of African Americans were admitted to UNC-Chapel Hill as undergraduate students and that even that increase was to only sixty African American freshman students in 1969 and 127 African American freshman students in 1970. The same Bicentennial UNC-Chapel Hill Fact Book includes the chart below which shows that even in 1981, when 461 African American freshmen were admitted of 3,217 total 1981 freshmen, the percentage of African Americans among UNC-Chapel Hill undergraduates was at its very highest—14.33% of all UNC-Chapel Hill freshmen, but there was still White predominance in freshman enrollment. There were over 3,000 more White freshman students than African American freshman students at UNC-Chapel Hill. So, even at fairly high percentages of African American enrollment, white predominance remained the norm at UNC-Chapel Hill. And, importantly, for the 156 years not shown on the chart below, African Americans and other non-Whites were prohibited from attending the

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323. Id.
whites-only UNC-Chapel Hill campus. The vast majority of the non-African American freshmen were White students.

There were a few exceptions. A single Asian American student attended UNC-Chapel Hill in 1878 and in 1894. See UNC Timeline, ASIAN AM. CTR. https://aac.unc.edu/timeline/ [https://perma.cc/6VNZ-XM2Z]. In 1945, two Japanese American students attended UNC-Chapel Hill, one as a graduate student and one as an undergraduate student. See 1945: Two Japanese American Students Come to UNC After Incarceration Camps, CAROLINA STORY: VIRTUAL MUSEUM UNIV. HIST., https://museum.unc.edu/exhibits/show/asian-american-unc/1945 [https://perma.cc/9T3Y-WGK7]. Between 1908–1911, a small number—as many as eleven—Cuban Americans attended UNC-Chapel Hill. See Lolita Rowe, Timeline of UNC-Chapel Hill Latinx History, UNC LIBRARIES (Aug. 24, 2023), https://blogs.lib.unc.edu/uarms/2023/08/24/timeline-of-unc-chapel-hill-latinx-history/ [https://perma.cc/F383-CZ42] (observing that in 1986, there “are 22 Latinx faculty members at UNC” of 1,975 total faculty and that “[a]s of Fall 1990, there are 201 Latinx students enrolled at UNC-Chapel Hill”).

As of 1986, the year of the publication of the first UNC-Chapel Hill Fact Book, the number of Asian American freshmen was less than sixty, the number of “Hispanic” freshmen was twenty, while the number of white freshmen in 1986 was almost 3,000 white students (2,930). See MYRON DUNSTON, UNIV. OF N.C. OFF. OF INST. RSCH., FACT BOOK: 1986–1987 7 (1987), https://oira.unc.edu/wp-content/uploads/sites/297/2017/07/fb1986_1987.pdf [https://perma.cc/68PM-CV4M].
Over the course of two centuries—from 1795 to 1995—all but the last twenty years were not just years of white predominance in enrolled students population, but UNC-Chapel Hill had zero African Americans enrolled for a century and a half and exceedingly low numbers of African American undergraduate and graduate student enrollment so very low—ranging from two to 238 (0.01% to 1.4% of the enrolled students)—that UNC-Chapel Hill remained essentially whites-only for the almost two decades between 1951 and 1969. The UNC-Chapel Hill faculty was whites-only as well for most of the two centuries between 1795 and 1995. Prior to 1966, there were zero African American faculty members. In 1966 and 1969, UNC-Chapel Hill hired only one single African American faculty member and one single tenured African American faculty member out of over 1,150,326 making for a clearly overwhelmingly predominately white—or whites-only—faculty at UNC-Chapel Hill.327

Blindness to white predominance ignores that Whites are the majority at the private Ivy League Harvard University and the very selective “public ivy” University of North Carolina at Chapel Hill. It is this type of blindness that is implanted in the lawsuits against Harvard and UNC to perpetuate the falsity that racial justice and inclusion of historically excluded racial groups is racist against Whites. Incentivizing the inclusion of African Americans and other non-Whites in proportion to demographics of high school applicants, particularly as it relates to the flagship campus of the state university system such as UNC-Chapel Hill, is not anti-White racism.

The lie that reducing white predominance and dominance of a coveted educational institution or workplace is racist against Whites is, at its core, a claim of white racial supremacy.328 The implicit logic is that Whites deserve to be predominant in such places, particularly in comparison to African Americans. Sadly, the falsehood the Repression army hides inside its Trojan horse lawsuits—the falsity that racial inclusion is immoral—is implicit in and thus fueled by the SFFA v. Harvard/UNC majority opinion. However, whatever degree of misplaced moral approbation against inclusion-motivated attention to race is conveyed by the Court majority in the

326. UNC BICENTENNIAL FACT BOOK, supra note 322, at 5 (chart showing overall number of UNC-Chapel Hill faculty to be 1149 in 1,965 and 1,469 in 1970).


328. This is also true of many claims that racial effect discrimination laws—disparate impact laws—and race affirmative action are racist against Whites. Cf. Yuvraj Joshi, Weaponizing Peace, 123 COLUM. L. REV. 1411, 1443 (2023) (“[A]lthough [contemporary anti-affirmative action] arguments may appear different from the overtly segregationist arguments of the Jim Crow era, their functions are similar: to cast the pursuit of racial inclusion as an impediment to racial peace.”)


SFFA v. Harvard/UNC ruling, the justices’ moral views, unlike the Supreme Court’s legal rules, hold no greater weight than the ethical and moral views of any other Americans.

CONCLUSION

“A society that has done something special against the Negro for hundreds of years must now do something special for him”

Trojan horse admissions lawsuits are crafted with the enticing façade that they will be engines for making college admissions fairer. But, in five decades, such cases have only brought racial divisiveness and increased judicial and societal suspicion of inclusion-motivated attention to race. The SFFA v. Harvard/UNC case is the most recent iteration of Trojan horse admissions lawsuits sent by the Repression army to achieve its long-time goal of rights repression. Even as the SFFA v. Harvard/UNC Trojan horse lawsuit advanced against but did not destroy the Bakke-Grutter-Fisher line of precedent the case succeeded in a non-legal mission—propagating the falsehood that promoting racial diversity, equity, and inclusion (DEI) is anti-White racism. If adopted, this dangerous ideology and doctrinal endgame, which promote and seek an unprecedented legal rule categorically prohibiting inclusion-motivated race attentiveness, would entrench white predominance and white opportunity hoarding indefinitely.

Through the analogy of this Article, the contents of Trojan horse admissions cases and their role as a contemporary battle tactic of the Repression army are identified. When W.E.B. Du Bois declared the nineteenth-century Reconstruction-era of racial justice and inclusion for African Americans “a splendid failure,” he cautioned future generations that the Repression army had managed complete victory despite losing the Civil War. The twenty-first-century Repression army’s adoption of indirect war tactics to destroy the systemic-racism-focused provisions of the Civil Rights Act of 1964 and Americans’ moral commitment to racial DEI could soon win back the terrain that repression forces lost in 1964 when their twentieth-century direct attack on racial inclusion and enactment of the landmark law failed. Absent forces willing to recognize and respond to the contemporary Repression army’s fifty-year scheme of disguising itself as friendly to the racial justice and civil rights gains of the twentieth century, another splendid failure for American racial justice is imminent.

329. KING, JR., supra note 77, at 95 (italics instead of underline emphasis in original).
330. See West-Faulcon, supra note 284.