

# United States Senate

WASHINGTON, DC 20510

July 6, 2023

Mr. Christopher Eisgruber  
President  
Princeton University  
1 Nassau Hall  
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Dr. Lawrence Bacow  
President  
Harvard University  
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Dear College and University Presidents:

I write to express concern about your institutions' openly defiant and potentially unlawful reaction to the Supreme Court's landmark decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*,<sup>1</sup> which reaffirmed the bedrock constitutional principle of equality under the law and therefore forbade invidious race-based preferences in college admissions. As you know, the Court has instructed you to honor the spirit, and not just the letter, of the ruling. Going forward, the Court explained, "universities may not simply establish through application essays or other means the regime we hold unlawful today."<sup>2</sup>

However, within hours of the decision's pronouncement, you and your institutions expressed open hostility to the decision and seemed to announce an intention to circumvent it. Statements along these lines are particularly disconcerting in light of recent revelations that proponents of unlawful affirmative action sometimes practice "unstated affirmative action," in which hiring and admissions decisions are made on the basis of race in a covert and unspoken way, even when the relevant decisionmaker is placed under oath in a deposition.<sup>3</sup> Below, I have highlighted a few alarming excerpts from your responsive statements:

- Princeton President Eisgruber complained that the Court's decision was "unwelcome and disappointing" and vowed to pursue "diversity . . . with energy, persistence, and a determination to succeed despite the restrictions imposed by the Supreme Court in its regrettable decision today."

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<sup>1</sup> 600 U.S. \_\_\_ (2023).

<sup>2</sup> Slip op. at 39.

<sup>3</sup> Christopher F. Rufo @realchrisrufo, Twitter (June 29, 2023), <https://twitter.com/realchrisrufo/status/1674548940522549248>.

- Oberlin President Ambar felt “deeply saddened and concerned for the future of higher education” when the Supreme Court’s ruling was announced. She assured her students and faculty that, rather than dampening her enthusiasm for affirmative action policies, the decision “only strengthens our determination to be a welcoming place where diversity is celebrated[.]”
- Dartmouth President Beilock wrote, “I want to be absolutely clear: This decision in no way changes Dartmouth’s fundamental commitment to building a diverse and welcoming community of faculty, students and staff[.]”
- Harvard President Bacow boasted that “[f]or almost a decade, Harvard has vigorously defended an admissions system” that the Supreme Court ruled unlawful and then “reaffirm[ed] the fundamental principle that deep and transformative teaching, learning, and research depend upon a community comprising people of many backgrounds, perspectives and lived experiences[.]”
- Cornell President Pollack expressed “disappoint[ment] [in] the Supreme Court of the United States,” boasted that Cornell has been “committed . . . to diversity and inclusion” since 1865, and indicated that it will remain so.
- Kenyon Acting President Bowman extolled the “transformative power of living, learning and working in a diverse community” and said that “the decision does not alter Kenyon’s mission or [its] commitment to access and inclusion.”
- Yale President Salovey told his university that he was “deeply troubled” by the Supreme Court’s historic ruling and declared that although “[t]he Court’s decisions may signal a new legal interpretation, . . . Yale’s core values will not change.”
- Brown President Paxson proudly noted Brown’s having “joined no less than eight amicus briefs in support of the use of affirmative action in higher education” and promised that “Brown . . . will remain firmly committed to advancing diversity[.]”
- Penn President Magill stated that “we remain firm in our belief that our academic community is at its best when it is diverse” and that “our values and beliefs will not change” in light of the Court’s demand for robust civil rights.
- And Columbia President Bollinger went on television to declare that the *Harvard College* opinion was a “tragedy” and to confirm Columbia’s statement that “diversity is central to our identity” and that “we can and must find a durable and meaningful path to preserve it.”

My colleagues have assured me that they share my concern that colleges and universities, and particularly the elite institutions to whom this letter is addressed, do not respect the Court's judgment and will covertly defy a landmark civil rights decision with which they disagree. I do not need to remind you of the ugly history of defiance and lawlessness that followed other landmark Supreme Court rulings demanding racial equality in education.<sup>4</sup> In one infamous case, Virginia Governor Thomas B. Stanley responded to the decision in *Brown v. Board of Education* by pledging to show "the rest of the country [that] racial integration is not going to be accepted in the South" and by vowing to organize "massive resistance" in the Southern States. Violence and racial animosity ensued.

The United States Senate is prepared to use its full investigative powers to uncover circumvention, covert or otherwise, of the Supreme Court's ruling. You are advised to retain admissions documents in anticipation of future congressional investigations, including digital communications between admissions officers, any demographic or other data compiled during future admissions cycles, and other relevant materials. As you are aware, a number of federal criminal statutes regulate the destruction of records connected to federal investigations, some of which apply prior to the formal commencement of any inquiry.<sup>5</sup>

In accordance with my interest in helping enforce the Supreme Court's decision in *Harvard College*, I would like answers to the following questions by **July 21, 2023**.

- What procedures will your institution implement to ensure that records are retained in accordance with this letter?
- What instructions are you giving staff about their obligations to preserve records in anticipation of a potential investigation? Please inform me of the date and nature of such instructions.
- Has your staff ever been advised *not* to preserve records or to communicate internally in ways that could circumvent future inquiries? If so, please discuss the date and nature of such advisements.
- How will your institutions ensure that new admissions practices do not "simply establish . . . the regime" that the Supreme Court has held unlawful?
- What admissions practices previously employed by your institutions will now be forbidden?

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<sup>4</sup> See *Brown v. Board of Education: Virginia Responds*, THE LIBRARY OF VIRGINIA, <https://www.lva.virginia.gov/exhibits/brown/resistance.htm>.

<sup>5</sup> 18 U.S.C. §§ 1505, 1519.

- If you have publicly committed to an interest in “diversity,” how will you ensure that your commitment to that value does not entail direct or indirect race-based preferences?

Sincerely,



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JD VANCE  
United States Senator

CC:

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