

Students for Fair Admissions
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Edward Blum
President

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Peter Salovey
Office of the President
Yale University
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peter.salovey@yale.edu

Re: Potential Destruction of Student Admissions Files

Dear President Salovey:

My name is Edward Blum and I am the President of Students for Fair Admissions, Inc. ("SFFA"). SFFA is a nonprofit membership group of students, parents, and others who believe that racial classifications and preferences in college admissions are unfair, unnecessary, and unconstitutional. SFFA's mission is to support and participate in litigation that will promote and protect the right of the public to be free from discrimination on the basis of race in higher education admissions. In line with this mission, SFFA recently filed lawsuits against Harvard University and the University of North Carolina at Chapel Hill, alleging that these universities are employing racially discriminatory policies and procedures in administering their undergraduate admissions programs in violation of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.

I write in response to recent media reports that Yale Law School has (or is in the process of) destroying its student admissions evaluation records (along with any notations made by the career development office in individual student files) and that other schools and universities may be contemplating similar actions. *See* Joseph Pomianowski, *Yale Law School Is Deleting Its Admissions Records, and There's Nothing Students Can Do About It*, The New Republic (Mar. 15, 2015). It is unclear from the article whether Yale has undertaken a similar course of action with regard

to undergraduate admissions files. In either case, not only does the destruction of admissions files raise serious concerns under the Family Education Rights and Privacy Act, which allows students to access and correct inaccuracies in their own records, the destruction of such files risks spoliation of evidence relevant to ongoing litigation. *See, e.g., Diana v. Netjets Services, Inc*., 50 Conn. Supp. 655 (2007). In its complaint against Harvard, SFFA alleged that "Harvard's data is highly consistent with all other Ivy League schools, which … inexplicably enroll Asian Americans in remarkably similar numbers year after year after year." As proof, the complaint set forth seven years of enrollment data from the Ivy League schools—including Yale University. Thus, Yale has been on notice that undergraduate student admissions files may be subject to subpoena as this important civil rights case proceeds to the discovery phase. To remove any doubt, however, SFFA hereby notifies Yale of its legal duty to preserve all admissions files in its possession or control. To the extent that Yale has already destroyed such documents and is able to retrieve them, it must do so promptly.

More broadly, it is in Yale's interest to preserve these records. By employing racial preferences in admissions decisions, Yale has subjected itself to probing review and potential litigation under Title VI. The Supreme Court has explained that "all racial classifications … must be analyzed by a reviewing court under strict scrutiny." *Fisher v. University of Texas*, 133 S. Ct. 2411, 2421 (2013). Strict scrutiny requires a "searching examination" and the university "bears the burden to prove that the reasons for any racial classification are clearly identified and unquestionably legitimate." *Id*. at 2419. "Prospective students, the courts, and the public can demand" therefore that Yale "prove [its] process is fair and constitutional in every phase of implementation." *Grutter v. Bollinger*, 539 U.S. 306, 394 (2003) (Kennedy, J., dissenting). It should go without saying that Yale cannot destroy evidence essential to judicial review of its admissions policies and expect to withstand strict scrutiny if and when its admissions policies are challenged in court.

In the end, this brazen attempt to avoid scrutiny of legally questionable admissions practices is precisely the wrong course of action at precisely the wrong time. As you surely know, *Fisher* is pending before the Supreme Court and the Court will soon decide whether to accept the case for a second time. It recently came to light that the University of Texas at Austin, in conjunction with its unconstitutional use of race, was for years secretly running a dual-track admissions program for the benefit of politically connected applicants. The decision of Yale, and perhaps other schools, to destroy admissions files on the heels of this troubling revelation lends credence to the concern that elite universities will do everything within their power to ensure that "minority admissions schemes" are neither "transparent" nor "protective of individual review." *Grutter*, 539 U.S. at 394 (Kennedy, J., dissenting). It instead suggests resistance to enforcement of the Fourteenth Amendment and federal civil rights law sadly reminiscent of behavior the Supreme Court intervened to stamp out decades ago. A concerted effort, through destruction of applicant records and the implementation of hidden admissions policies, by schools using racial preferences will only heighten the need for further judicial intervention.

Sincerely,

Edward Blum