US Supreme Court hears lengthy oral arguments on racial preferences in university admissions

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The US Supreme Court heard an extraordinary total of five hours of arguments on Monday in two parallel cases challenging the use of racial preferences to decide university admission applications at Harvard University and the University of North Carolina.

These preferences, known as "affirmative action" in the US, have been previously upheld by the Supreme Court within limited parameters. With the emergence of a 6-3 far-right majority under Trump, the court is now poised to overrule these precedents.

Given the court's decision this past summer abolishing the constitutional right to abortion, the ultimate decision on affirmative action, expected in the first half of next year, could flip the board on decades of settled policy and have far-reaching consequences across countless institutions and professions.

During the oral arguments, the two principal camps in the conflict over affirmative action came clearly into focus. Each of these camps represents a different faction of the American capitalist political establishment, each with its own strategic conceptions for how dissent from below can be held in check so that the long-term interests of US imperialism can be upheld.

The political forces aligned with the Democratic Party—including the Biden administration, the universities themselves and the three justices in the minority—argued in defense of affirmative action.

The political forces aligned with Trump and the Republicans—including the far-right Supreme Court majority and the attorneys arguing on behalf of the well-funded legal initiatives that gave rise to both cases—argued against affirmative action. The latter forces are cynically appealing to grievances and resentments generated by racial preferences for their own fascistic purposes, while posturing falsely as paragons of "race-neutral" democratic principles.

Regarding the five hours of oral arguments on Monday, it would be an understatement to say that neither side put forward a position that could remotely be described as left-wing.

In an argument remarkable for its candor, the Biden administration's representative in the Supreme Court proceedings, Solicitor General Elizabeth Prelogar, referenced the phenomenon of "fragging" during the Vietnam War, in which mutinous black conscripts killed their white officers. Arguing that the US military had experienced "tremendous racial tension and strife," Prelogar said it is now the "consistent judgment" of "senior military leaders" that a "diverse" officer corps is essential for military cohesion.

In a key 2003 case upholding affirmative action at the University of Michigan Law School, which Prelogar referenced, the Supreme Court endorsed this point explicitly. "High-ranking retired officers and civilian military leaders assert that a highly qualified, racially diverse officer corps is essential to national security," the majority ruling stated.

This argument for affirmative action reflects the position of not just the Pentagon but of a substantial cross section of corporate boardrooms, law firm executive suites, Wall Street offices, academic institutions and Hollywood production companies: namely, that the stability of American imperialism, the profit system and the whole social order depends on bringing a privileged section of minorities into the ranks of the elite.

During the oral arguments, Seth Waxman, the attorney representing Harvard, featured this sentiment prominently in his opening argument, declaring that "diversity" makes "our businesses more innovative and globally competitive" and "our military more cohesive."

Justice Elena Kagan, appointed by President Obama in 2010, gave perhaps the most direct expression of this sentiment on Monday. Describing prestigious universities like Harvard as "the pipelines to leadership in our society," she implicitly warned that any careless disruption of the process by which the ruling class selects and grooms its agents would be felt throughout that "leadership," i.e., in businesses, law firms, the military brass and the government.

A picture emerged in the oral arguments of affirmative action as a key pillar of the American social and political order, which in recent decades has become deeply entrenched in academia, the corporate monopolies, the state and the military.

As demonstrated by the Harvard case in particular, around the institution of affirmative action an entire unhealthy and cynical culture has developed, as different "identities" jostle for preferences, and as those responsible for doling out the preferences give free rein to their own subjective prejudices.

Before the Harvard case arrived at the Supreme Court, the university prevailed both in a trial and in the court of appeals but not before embarrassing internal documents came to light that exposed the subjective manner in which students from some backgrounds were arbitrarily given high "leadership" scores, while others, particularly Asian American students, were given low scores for "personality."

Indeed, in response to these practices, a whole cottage industry has sprung up of expert consultants who charge a fee to advise high school students how to appear "less Asian" in college applications, so as not to fall victim to the operation of these preferences.

The reality at Harvard is that while large numbers of applicants compete amongst each other in a zero-sum game for a relatively small set of racial preferences, the children of wealthy donors cruise past in

huge numbers, rendering hollow all of the university's high-sounding rhetoric about "diversity."

The arguments on Monday continued far longer than is usual for Supreme Court practice. While the legal issues in both cases are similar, the Supreme Court doubled the usual time for argument by hearing arguments on each case separately.

The arguments themselves were characterized by an *Alice in Wonderland* atmosphere of absurdity and make-believe, in which the three justices appointed by Trump—the ex-president who only recently delivered an unhinged anti-Semitic rant at a fascistic rally in Texas, and who regularly advocates the racist lie that the COVID-19 virus was engineered in a "Wuhan lab"—were permitted to posture unchallenged as opponents of racial prejudice.

The Supreme Court's prestige has been shattered in the eyes of tens of millions of people by its decision this year purporting to erase the right to abortion. The *New York Times* on Tuesday worried out loud that the legal rampage by the far-right majority "threatens the stability of the law and the court's own legitimacy." But that train has long since left the station.

The Supreme Court's legitimacy has never recovered from the 2000 theft of the presidential election, and whatever shred of legitimacy remained has been compromised by the court's endorsement of the so-called "war on terror," by the January 6 conspiracy, and by the ongoing efforts, which the Supreme Court has welcomed, to undermine future elections through the so-called "independent legislature theory."

Justice Clarence Thomas, whose wife Virginia Thomas is directly implicated in the January 6 coup attempt, is particularly unworthy of being addressed as "Your Honor." In flagrant violation of judicial ethics, Thomas continues to issue rulings in cases where he has an obvious conflict of interest, effectively daring the Democrats to impeach him. The court's newest justice, Ketanji Brown Jackson, by contrast, recused herself from the Harvard case, since she once served on Harvard's board of overseers.

In emails that came to light two days after the oral arguments, Trump's lawyers described Clarence Thomas as the "key" to the plan to overturn the 2020 election. "We want to frame things so that Thomas could be the one to issue" a ruling in favor of Trump, attorney Kenneth Chesebro wrote on December 31, 2020, calling Thomas the "only chance" to obtain legal sanction for the coup.

None of this could be said out loud during the five hours of arguments Monday, during which all of the attorneys observed the ordinary forms of deference required by Supreme Court etiquette, even as the black-robed gangsters on the bench are actively working to eviscerate decades of hard-won democratic rights.

While the arguments took the form of attempts at persuasion, everyone knows that the justices all made up their minds long before the case was called—and long before being appointed to the bench.

During the arguments, the reactionary justices repeatedly attacked Harvard's lawyer by invoking the university's history of deliberate discrimination against Jews during the tenure of Harvard President A. Lawrence Lowell (1909-1933). Harvard's attorney responded to these attacks with a cringing apology instead of shooting back with the obvious retort that the Supreme Court had no business lecturing anybody about racism, given that during the same period it upheld Jim Crow segregation in *Plessy v. Ferguson* (1898) and upheld internment camps for US citizens of Japanese ancestry in *Korematsu v. United States* (1944).

The challenges to the admissions practices at Harvard and the University of North Carolina were brought by the tendentiously named "Students For Fair Admissions" (SFFA), a project of right-wing legal activist Edward Blum, whose earlier projects include efforts to eviscerate the Voting Rights Acts.

The arguments of the attorney for SFFA, Patrick Strawbridge, generally consisted of sound bites aimed at right-wing and libertarian media circles. At one point he claimed that "Harvard is not diverse at all" because, among other things, "nine percent of incoming freshmen at Harvard are conservatives." The undertone of this argument, which will be heard loud and clear in pro-Trump circles, is that by admitting fewer minorities to Harvard, there will be more room for white conservatives.

Attacking affirmative action from the right, the Republican-aligned arguments were deliberately calculated to inspire resentment towards the beneficiaries of racial preferences. "I think you need to treat people equally based on race," Strawbridge declared in another carefully rehearsed quip, "just as you're not going to hold my race against me in judging the quality of my arguments."

In many cases, these Republican-aligned provocations misrepresented or exaggerated Harvard's actual practices, prompting Harvard's attorney to retort at one point that while "SFFA is fully entitled to its own legal arguments, it is not entitled to its own facts."

Affirmative action has been a fixture of American social life for decades, and the balance sheet of this policy is also a question of indisputable fact: A narrow layer of minorities has been enriched, the living standards of working people of all races have declined across the board, and the wealth of the richest layers has shot into the stratosphere.

The aim of this policy was never progress or social welfare but divide and rule. In line with its more recent promotion of the *New York Times*' 1619 Project and "critical race theory," the Democratic Party sees identity politics and the promotion of "race consciousness" as central to its efforts to divide the working class and develop a base of support among more privileged layers for its right-wing, militarist and anti-worker policies.

At the same time, the socialist critique of affirmative action and racial politics has nothing in common with the campaign being waged by the Republicans and Trump, at the root of which is the fascistic lie that "white America" is being destroyed by "inferior races" in a so-called "great replacement."

A socialist policy is not to dole out the "privilege" of an education to a select few, each of whom must grab a spot by denying that spot to someone else, but to guarantee quality university education for all free of charge. The resources exist; it remains only for the working class to reject the reactionary politics of race and to unite and fight for it.