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STATEMENT BY BARBARA R. ARNWINE, ESQ., PRESIDENT & FOUNDER, AND DARYL JONES, ESQ., BOARD CHAIRMAN OF THE TRANSFORMATIVE JUSTICE COALITION REGARDING THE RECENT UNITED STATES SUPREME COURT RULINGS.

Elections have consequences. This is most readily seen in the June 2023 decisions by the United States Supreme Court. Despite the majority of the Supreme Court justices being appointed by Presidents that lost the majority popular vote - representing the view of the majority of Americans - the "majority-minority" of these ultra-conservative, corporatist, and patriarchal justices were able to impose their agenda on the majority of the American people.

Indeed, as lawyers, we are appalled by the deterioration in the quality of the Court's legal reasoning, its dangerous abandonment of traditional Standing doctrine, and its distortion or shredding of precedents inconvenient to its results-oriented outcomes. Not only is this scandal-ridden Court hostile to a racially diverse, inclusive, and competitive society, but in its willingness to assist the corporatist elite, it seems hellbent on creating a permanent economic underclass by making education, the traditional path to economic advancement, foreclosed to African Americans, Latinos, Native Americans, many Asians, and those of low-income status.

It is through this disturbing lens that we review and condemn the recent decisions of the Roberts/Thomas court and call our multi-racial, inclusive members of our country to action!

<u>The Attack on Student Loan Debt Relief</u>.

We find it odd that private businesses can qualify for debt relief through the PPP programs, but students suffering from the same financial constraints due to the Coronavirus Pandemic are deemed not worthy of similar relief. Clearly, the Supreme Court has thrown itself into the political policy-making decisions regarding financially challenged students suffering from the fallout from the worst health pandemic in 100 years.

The Supreme Court doesn't belong in this policy decision. The consequence of its decision is to make the cost of higher education devastating for the economically debt-ridden and disadvantaged by thwarting their ability to prosper and partake of the American Dream.

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The Attack on Affirmative Action

The majority opinion, in this case, exemplifies the Court's cynical exercise of racial control. In an extremely flawed opinion, the court has rendered a decision designed to end affirmative action in education.

The practical effect of this decision will eliminate the use of race as one of many factors in college admission to ameliorate the historical effects and vestiges of racism. The Court irrationally permits racially tinged, and merit-insensitive admission programs for Athletes, Legacy, and children of faculty to continue unabated.

To reach its inherently flawed result, the Court engaged in "historical erasure" by ***not*** addressing (1) both Harvard and UNC as institutions benefited from the fruits of Slavery, the enslavement of African Americans; (2) the long and ugly centuries of racial discrimination against African-American applicants by these institutions; (3) the infestation of racists, including Ku Klux Klan members on the UNC Board and racist practices some of which only ended in the 1980s; (4) the Court deviously overlooks the passage of affirmative racial measures for years by the Reconstruction Congress to enforce the 14th Amendment with the intent to help assist the Freedman; and (5) the court hides a lot of its own horrible history of misinterpreting the 14th amendment which negatively harmed African-Americans *(US v. Cruikshank)* and which enshrined white supremacist racial hierarchy, especially against Asians *(US v. Thind and Ozawa v. US).*

Justices Sotomayor's and Justice Jackson's dissents eloquently reveal that the majority opinion ignores that the American past of racism is present in today's society based on persistent race-based disparities in K-12 education, college admissions, employment opportunities, home ownership, bank loans, and beyond.

The majority opinion declares admissions are "zero-sum" and then proceeds to place their collective thumbs on the scale to yet again advantage Whites. Indeed, nowhere is the racial ugliness and contempt for African Americans more pronounced than in the opinion's concluding language. In the concluding language, the majority Court opine that applicant essays can state their race, but, patronizingly, require that these students must show they "can contribute to the institution" knowing no such requirement will ever be applied to White legacy applicants.

We find offensive, but illuminating, the Court's exemption for military academies. This exemption contradicts every assertion by the Court in SFFA that the Constitutional philosophy of the Court is color-blindness.

Interestingly, the Court's Affirmative Action analysis excludes the military service academies. The exclusion of the service academies indicates that the Court is saying that race-based affirmative action is great and compelling, that it has no vagueness, no inability for judicial review, no issue of the connection

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between goal and outcome, and no required "ending" point because it has the goal of creating people of color as Leaders with the potential of dying for one's nation. Affirmative Action is good for training warriors to potentially die in battle but is not acceptable for developing leaders in the legal, medical, professional, and corporate spheres.

We find equally offensive Justice Thomas' disproven implication that African American students are better off at HBCUs. There is no doubt that HBCUs, sometimes despite serious racial discrimination in funding, are amazing institutions for producing outstanding African American professionals. They are so because they are inherently race-conscious, the very thing Thomas and the majority have now forbidden for Predominantly White Institutions (PWI).

TJC asserts that the presence of gifted and talented African Americans belongs in every higher educational setting. TJC is confident that this weakly reasoned and horrific opinion in SFFA will not stand the test of time and will be reversed in the future as wrongly decided.

Sadly, the court's decision will affect the number of Black and brown professionals who will no longer have the opportunity to attend many undergraduate institutions, thereby decreasing the already deplorably low number of Black and brown admissions to medical, law, and other professional schools.

The Attack on LGBTQIA 303 Creative web designer case.

The court also attacked the progress made in the societal structure for members of the LGBTQIA community. By deciding in favor of court-sanctioned discrimination against members of the LGBTQIA community, the Court has opened the door to rolling back the clock to discriminate against providing business services for people based on their personal sexual orientation.

Here the court cynically used the first amendment to undermine civil rights protections. This case contradicts and undermines the lie of purported repulsion to discrimination against Americans. Indeed, the court once again rushed to judgment by distorting its own standing doctrine to take a case based on a hypothetical injury.

It turns out that the purported fear of injury was a hoax and fraud upon the court. This emphasizes the dangerous and harmful consequences of this Robert's Court's rush to judgment to achieve an ideological goal. Although the case before the court applied to a web designer not being required to service same-sex couples, it is only a matter of time before this foundational step is expanded to other businesses.

Court Reform is an Imperative:

Major consideration should be given to court reform, including term limits for service on the Supreme Court. Justices could rotate off the Court but still have a judicial role. Additionally, expanding the Court and the Court receiving greater oversight by an independent entity would be advisable, especially when financial scandals arise.

The challenge today is whether the court's direct attack on women's reproductive rights; the attack on student debt relief; the attack on Affirmative Action; and the attack on LGBTQIA+ rights will drive

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voters to the polls in the 2024 election, or will the various communities whimper, roll over, and surrender to a totalitarian activists Supreme Court?

When a nest of bumble bees is attacked, they swarm around the attacker and annoy the attacker, hoping to be left alone. When a nest of hornets is attacked, however, the intruder is met with swift and severe pain. The hornets will insert their stingers inflicting pain on the attacker. The hornets collectively will sting the attacker repeatedly until the attacker disengages and flees for safety.

We must be like hornets in this moment of attack and not simply buzz with madness, but we must sting with our votes to protect our rights, protect our history, fight voter suppression, and prepare the road for generations to come.

The actions of the U.S. Supreme Court can be overcome with better appointments, more judicial diversity, and federal legislation. It will require, however, that American voters rise up and take back the inclusive direction of our country.

Be clear, the Transformative Justice Coalition will be in the streets pounding the pavement, providing encouragement and support to register and activate voters in marginalized communities throughout America. We will encourage our communities to be hornets and sting with our votes to protect themselves and our democracy.

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Founded in 2015 by Barbara Arnwine, president emeritus of the Lawyers Committee for Civil Rights, the Transformative Justice Coalition seeks to be a catalyst for transformative institutional changes that bring about justice and equality in the United States and abroad. Learn more at tjcoalition.org.