

THE CHRONICLE OF PHILANTHROPY

OPINION

It's Open Season on Civil Rights. Philanthropy Must Not Retreat.

As a new Supreme Court session begins today, an onslaught of lawsuits will use the affirmative-action decision to try to chip away at other rights. Donors should prepare to fight back and recommit to funding racial justice.

By *Stacey Abrams and Julián Castro*

OCTOBER 2, 2023



J. SCOTT APPLEWHITE, AP

With the stroke of a pen, the highest court in the land declared open season on the American Dream this summer when it effectively ended affirmative action in college admissions. The ruling put a target on all policies and programs that seek to remediate and prevent race-based discrimination everywhere, including workplaces and polling places — potentially imperiling the 2024 elections and opening the floodgates for far-reaching attacks on civil rights.

As a new Supreme Court session begins today, philanthropy needs to ready its resources to fight back against a slew of court challenges that threaten the very notion of diversity, equity, and inclusion.

Since the affirmative-action ruling, lawsuits have been filed against a [venture-capital firm](#) for helping businesses led by women of color and against a [law firm](#) with diversity recruiting practices. Last month, a group that opposes affirmative action [sued West Point](#), alleging it inappropriately uses race and ethnicity in making admissions decisions. (The court's earlier ruling did not cover military academies.)

RECOMMENDED ARTICLES

PODCAST

[How Covid-19 Will Affect Social Change \(Podcast\)](#)

THE FACE OF PHILANTHROPY

[They Witness Deaths Daily: Now Comes Covid-19](#)

PODCAST

[How Sesame Workshop Helps Children, Families, and Caregivers Cope During the Covid-19 Pandemic \(Podcast\)](#)

At the same time, right-wing activists, [funded by philanthropy](#), have ramped up [allegations](#) questioning the legality of voter-registration campaigns aimed at communities of color.

The Supreme Court has itself sent mixed signals on race. In the same term that the justices invalidated race-based affirmative action, they issued an equally powerful decision in [Allen v. Milligan](#) that rebukes efforts to make it harder for people of color to vote. The court ruled that Alabama's congressional districts discriminated against Black voters and must be redrawn, reinforcing a centerpiece of our democracy: that minority groups deserve representation reflective of their share of the population.

Despite the high court's clear mandate, the Alabama legislature has [refused to add another Black district](#). Last week the [Supreme Court sided with a lower court](#) in denying further efforts to delay redrawing the congressional map. However, the state's open defiance is a bellwether of concerted attacks on those who see education, jobs, and democracy as their paths to a better life.

Expect more on the constitutionality of fighting racism in the new Supreme Court session. The court, for example, has agreed to hear [Alexander v. South Carolina State Conference of the NAACP](#), which, like the

Alabama case, challenges South Carolina's congressional map. The court's action on affirmative action will also make it easier to chip away at the rights of [other marginalized groups](#), especially the LGBTQ+ community, which is battling legal challenges across the country.

Nonprofits Are Vulnerable

The legal and political landscape to defend and protect diversity and inclusion is fraught and uncertain. It's clear that any organization fighting for equity and justice risks being targeted. Nonprofits are especially vulnerable.

In addition to our own extensive work in the social sector, we both currently serve on the Board of Trustees for the Marguerite Casey Foundation. We know first-hand, the impact that philanthropy has on grassroots movements. At a time when right wing philanthropy is pouring money into organizations hell-bent on destroying our most basic rights, progressive and mainstream donors must do more than hold the line.

Instead, they must counter these attacks with renewed vigor and increased resources. The field should not give in to the manufactured legal crisis by relenting on demands for racial equity. Litigators are taking advantage of the affirmative-action ruling by suing those of goodwill into complacency. They have not won a single lawsuit, but the mere specter of action has paralyzed or reversed years of positive momentum.

The tasks for philanthropy are clear. First, philanthropy must immediately halt its recent [great retrenchment](#) on racial-justice funding. Since 2022, too many companies and philanthropic institutions that asserted with one voice that "Black Lives Matter" and pledged support for the racial-justice movement have slashed resources and cowered in response to [negative headlines](#) attacking "woke" philanthropy. This about-face only makes the work of the detractors easier.

The attacks on racial-equity efforts will work if too many of our colleagues respond tepidly or retreat. We should follow the lead of the [Fearless Fund](#), which is [aggressively fighting](#) a lawsuit that would have prevented the organization from directing its funding to start-up businesses owned by Black women.

Second, we implore foundations not to remove language signaling a commitment to racial justice or specific communities of color from their websites, grant applications, and grant programming. The targeted affirmative-action decision applied solely to admissions to colleges and universities that receive federal funding — not to foundations, grant makers, or corporations investing in racial-justice work. This is a tried-and-true tactic: fearmongering versus fact-finding.

Funding Legal Battles

The threat of lawsuits means dedicating dollars to legal battles, which many donors shy away from. But defending the rights of those we support is worth the cost and any perceived reputational harms. American

history has shown that the pursuit of justice runs through the courthouse and the state house. Giving up prematurely is tantamount to conceding the point that diversity, equity, and inclusion are invalid goals.

To the contrary, multiple studies have shown that greater diversity helps the [bottom line](#), improves [job performance](#), and encourages innovation. On a more fundamental level, we must reject the false paradigm that defending and pursuing racial justice is more expensive than capitulation. We can stand up for our values and increase value at the same time.

Finally, ongoing support is needed for organizations that are reaching communities previously discouraged from voting, especially people of color. As the 2024 election season approaches, those seeking to maintain a narrow vision of America will continue to invoke the Supreme Court's reasoning in a host of policy areas — including as a pretext to limit voting rights. Instead of pulling back, now is the time to pour more money into those groups working tirelessly to get people to the polls and ensure our democracy stays strong.

Our nation faces no more important charitable purpose right now than to defend the right to fight racism. Together, we must intensify our response against those intent on using the Supreme Court's affirmative-action decision to undermine other forms of diversity.

We welcome your thoughts and questions about this article. Please [email the editors](#) or [submit a letter](#) for publication.

DIVERSITY, EQUITY, AND INCLUSION

ADVOCACY

FOUNDATION GIVING

Stacey Abrams

Stacey Abrams is the Walters Endowed Chair for Race and Black Politics at Howard University, former minority leader of the Georgia House of Representatives, and the founder of Fair Fight. She is also a member of the Marguerite Casey Foundation Board of Trustees.

Julián Castro

Julián Castro is the former secretary of the U.S. Department of Housing and Urban Development, the former mayor of San Antonio, Tex., and a political analyst for MSNBC/NBC. He is a member of the Marguerite Casey Foundation Board of Trustees.

Recommended Webinars for You



Corporate Grant Seeking in the Current Climate

Join this 75-minute session to learn how to connect with corporate grant makers, pitch your cause in compelling ways, and cultivate potential new corporate

[Register Now](#)



How to Convey Impact to Donors in Times of Change

Learn from foundation decision makers how to build a case for support despite uncertainty and communicate results that inspire confidence in

[Watch On Demand](#)

P 1255 23rd Street, N.W. Washington, D.C. 20037
 © 2023 The Chronicle of Philanthropy