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The Man Who Ended Affirmative Action Is Just Getting Started

By **Chris Villani**

Law360 (May 13, 2025, 7:17 PM EDT) -- Nearly two years after the U.S. Supreme Court struck down affirmative action in college admissions, the legal strategist who brought the landmark case is using the ruling in a bid to end race-based programs in the public and private sectors, bolstered by allies in the executive branch.

After bringing several cases over race-based college admissions to the high court, Edward Blum finally secured a seminal victory in suits against Harvard University and the University of North Carolina at Chapel Hill in an ideologically split **June 2023 decision**.

Blum's Litigation Blitz

The American Alliance for Equal Rights, a group founded by Edward Blum, has seven pending suits that cite or seek to expand upon the legal analysis in the Harvard affirmative action case beyond the college admissions context.

- American Alliance for Equal Rights v. UT-Austin et al. (TX-W, 1:25-cv-00596)
  The suit claims UT-Austin and others run a race-based program that exclusively surveys Black undergraduates.
- American Alliance for Equal Rights v. American Bar Association (IL-N, 1:25-cv-03980)
  The suit claims the ABA runs a discriminatory Legal Opportunity Scholarship Fund contest that awards $15,000 to students who are Black, Native American, Hispanic or Asian.
- American Alliance for Equal Rights v. American Airlines (TX-W, 4:25-cv-00125)
  The suit claims American runs a supplier-diversity program where only "minority" entrepreneurs and select other groups can apply.
- American Alliance for Equal Rights v. Raoul (IL-N, 1:25-cv-00669)
  The suit challenges S.B. 2930, an Illinois law that requires some nonprofits to disclose the race and ethnicity of their board members.
- American Alliance for Equal Rights v. Pritzker (IL-C, 3:24-cv-03299)
  The suit challenges the "Minority Teachers of Illinois scholarship program," calling it a grant program that excludes white students.
- American Alliance for Equal Rights v. Southwest Airlines Co. (TX-N, 3:24-cv-01209)
  The suit claims Southwest's ¡Lanzate! Program — which was "ONLY for Hispanic students" — violated the Civil Rights Act of 1866.
- American Alliance for Equal Rights v. Ivey (AL-M, 2:24-cv-00104)
  The complaint challenges an Alabama law that the suit says requires two members of the state's "Real Estate Appraisers Board" to be minorities.

Blum has at least a dozen suits that are ongoing, targeting big private companies like American Airlines and Southwest Airlines and organizations like the American Bar Association. He also has active suits against universities, including multiple U.S. military academies and the University of Texas at Austin, the defendant in two past high court cases brought by Blum. All but one was filed after the Supreme Court ruled in the Harvard suit, Students For Fair Admissions v. Harvard .

Blum's organization that led the cases against Harvard and UNC — Students for Fair Admissions, or SFFA — sued UCLA Medical School earlier this month, claiming that whistleblowers have said the school openly uses race in its admissions process in defiance of the ruling. Seven of the active cases, however, do not involve admissions policies.

Scott Schneider, the owner of Schneider Education & Employment Law PLLC, said Blum is seeking to capitalize on a favorable legal and political landscape.

"If I were Edward Blum, now is the time to strike," Schneider said. "You've got the government behind you, you have some good court precedent, and the public sentiment feels like it has swung 180 degrees since three or four years ago."

Schneider added, "now is the time to pounce and see if you can make some new law in this space."

Blum declined an interview request. But in a statement to Law360, he endorsed a broad reading of the Harvard ruling.

"While the SFFA case addressed the legality of using race in college admissions, the legal foundation of that opinion extends to virtually every aspect of our nation's public policies which includes employment, contracting, voting and elections, among others," Blum said. "In virtually all instances, when public and private actors treat people differently because of their race, it violates our nation's civil rights laws and constitution."

Students for Fair Admissions and a separate group, the American Alliance for Equal Rights, have cited the Harvard ruling in suits against private employers and have active cases in Texas, California, Illinois and Alabama.

A 2024 complaint challenging Southwest Airlines' free flight program for Hispanic students argues that "this kind of rank discrimination was never lawful, even before Harvard held that colleges cannot use race in admissions."

"But in case Southwest needed a reminder, Harvard reaffirms that '[e]liminating racial discrimination means eliminating all of it,'" the complaint filed in Texas federal court states, quoting Chief Justice John Roberts' majority opinion.

Southwest sought to toss the suit as moot, writing in a motion to dismiss that updated eligibility requirements for the program state that applicants "will not be limited by race, ethnicity, or national origin."

Such changes in the face of litigation are not uncommon, said Goulston & Storrs PC employment attorney Joshua Davis.

Blum and the Trump administration "believe that the Harvard case gives them a broad mandate to take on diversity, equity, and inclusion with private employers," said Davis, who disputes this legal interpretation.

"It really is limited to education circumstances and the decision-making at colleges and universities," Davis added. "But businesses with DEI programs have backed away from certain language because they are worried about getting sued by people like Ed."

Alicia Samolis, chair of the employment practice at Partridge Snow & Hahn LLP, said she has noticed an uptick in "reverse discrimination" cases — brought by parties claiming they have been discriminated against in favor of historically disadvantaged groups — and a change in the way they are handled.

The claims that used to move forward were instances in which the defendant was, in Samolis' words, "dead in the water" due to some sort of smoking gun that made it clear there was intentional discrimination going on.

"To be frank, when I got a reverse discrimination claim prior to all this happening, as long as it wasn't

dead in the water, I knew it should be an easier claim to defend because it wasn't one the [U.S. Equal Employment Opportunity Commission] or the courts would be that interested in," Samolis said. "I now anticipate that will change."

Under acting EEOC Chair Andrea Lucas, the commission issued guidance saying it would "[root] out unlawful DEI-motivated race and sex discrimination." The change underscores an important boost for Blum in his run of post-Harvard litigation: He has an executive branch that is squarely in his corner. He has filed half a dozen lawsuits since President Donald Trump won the 2024 election.

Davis said the administration seems to be trying to change the rhetoric and language around diversity, equity and inclusion through a series of executive orders excoriating "illegal DEI."

"I think the administration is hoping that, by repetition, it will create a universe where they have made DEI illegal," Davis said.

But Davis said that not only does the SFFA ruling not provide a legal basis for these actions, much of what the government is challenging is not even illegal.

"Just reflecting as a lawyer, it's a very strange place to be in, because lawyering is always a balance of trying to help clients understand what the law is and help them comply with the law as they chase business objectives," Davis said. "But it's really complicated when you're faced with a client who wants to continue down a road you know is lawful, but you also know the government is trying to say the thing you know is lawful is unlawful."

In the Southwest case, for example, the administration filed a statement of interest in April backing Blum's position and citing not only the Harvard case but its affirmative action Supreme Court predecessors, the 2003 holding in Grutter v. Bollinger and the 1978 opinion in Regents of Univ. of California v. Bakke .

Schneider, the education and employment lawyer, said that the most straightforward interpretation of the Harvard case, that it is cabined off to the admissions process, is probably "way too narrow."

"It seems to me, the principles articulated in SFFA, you're going to have a hard time saying other employment or student-based actions based on race aren't, at least in some way, impacted by that decision," he said.

During the Harvard case, Oren Sellstrom and his organization, Lawyers for Civil Rights, argued on behalf of students of color who stood to be affected negatively by a ruling that would effectively reduce the number of Black and Hispanic students on the Cambridge, Massachusetts, campus. Sellstrom, Lawyers for Civil Rights' litigation director, said he views the Harvard ruling to be "quite narrow," even as it is repeatedly cited in efforts to restrict DEI programs.

"We are seeing some new strategies in this particular moment," Sellstrom said. "We are seeing people trying to stretch the law beyond where it actually is, but the struggle itself is very much a piece of what has always been the case in civil rights."

During the Harvard case, Lawyers for Civil Rights and its clients were granted "amicus plus" standing, meaning they could take a more active role as the litigation played out in Massachusetts federal court, the First Circuit and eventually the Supreme Court. Sellstrom said it is important in these cases to hear from the "directly affected beneficiaries" of race-conscious programs.

"That's why, in the Harvard case, like in many others, we wanted to make sure that our clients' voices were heard directly," he said.

Going forward, Samolis of Partridge Snow said that the Harvard case should have "no precedential value" in the employment context, but litigants would be wise to heed it anyway given that the justices opined on the issue of race-based programs generally.

A private employer could find itself at the Supreme Court facing an uphill battle even with lower court wins in its pocket, Samolis said.

"That was something we never thought of as a real risk, and now it is a risk," she said. "We have to advise the client that 'maybe we got the summary judgment that is favorable to us and I think we have a good shot,' but you do now have to make the client understand that is not the end of the story."

Davis noted that in many Democrat-led states like Massachusetts, the state enforcement and compliance agencies are still committed to the same DEI and antidiscrimination principles, creating a possible conundrum for employers who might want to advance DEI programs.

"Any Massachusetts employer finds itself between what the federal government may be doing and is saying and what they know Massachusetts is doing and has been doing forever," he said. "That's the rock and the hard place that everyone finds themselves in."

--Editing by Nicole Bleier and Kelly Duncan. Graphics by Ben Jay.
