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Attorney General Frosh Joins Appeals Court Brief Supporting Equity and Diversity in School Admissions

Coalition of Attorneys General Argue Against Challenge to Virginia High School's Race-Neutral Admissions Criteria

BALTIMORE, MD (May 16, 2022) – Maryland Attorney Brian E. Frosh joined a coalition of 16 attorneys general in support of a local school board in Fairfax County, Virginia, that was challenged in court for implementing a new race-neutral high school admissions policy that aimed to eliminate barriers to access and increase the likelihood that the school's students would receive the educational benefits that flow from diversity of all kinds, including racial diversity.

The [amicus brief](#), filed May 13 in the Fourth Circuit Court of Appeals in the case of *Coalition for TJ v. Fairfax County School Board*, rejects a claim that the Fairfax County School Board violated the Equal Protection Clause by intentionally discriminating against Asian-American applicants in revising its admissions plan for its nationally top-ranked Thomas Jefferson High School for Science and Technology. The revised plan eliminated the high school's use of standardized admissions tests in favor of a holistic review process that uses students' grades and other race-neutral criteria to promote geographic, socioeconomic, and racial diversity.

"The school board was right in its implementation of a race-neutral admissions review process," said Attorney General Frosh. "It's policy was designed to increase educational opportunities for all students and reduce educational inequities across the school system."

In their brief, the attorneys general argued in support of the school board and against the District Court's broad decision to enjoin implementation of the revised admissions plan. The District Court found that Asian-American applicants were disparately impacted by the changed plan, and that the school board purposefully disadvantaged such applicants because any success in increasing representation at the school for under-represented racial groups "by necessity" would decrease the representation of others. The District Court's decision required the school board to devise a new admissions policy to use in admitting students for this coming fall, and the court denied the school board's motion for a stay of the decision pending appeal. The Fourth Circuit subsequently granted a stay of the District Court's order and,

following an emergency application, the U.S. Supreme Court declined to vacate the stay. The School Board has since appealed the District Court's decision.

The attorneys general further argue that race-neutral policies are not subject to strict scrutiny simply because policymakers aimed in part to increase diversity. The brief describes how the District Court's reasoning – inferring racial animus from a race-neutral effort to break down barriers to access and thereby increase diversity of various kinds – would, if widely adopted, thwart future attempts by school leaders to secure important educational benefits for all students, and would also threaten effective state and local government policymakers' efforts to break down barriers to access and decrease inequities in other policy realms.

According to the brief, there is precedent stretching back decades that refutes the District Court's conclusion that a race-neutral government policy is subject to strict scrutiny solely because, in devising the policy, policymakers aimed to increase racial and other forms of diversity.

Joining Attorney General Frosh in today's brief are the attorneys general of California, Colorado, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Massachusetts, Michigan, Minnesota, New Mexico, New York, Oregon, Vermont, and Washington.

<https://www.marylandattorneygeneral.gov/press/2022/051622.pdf>