

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

COALITION FOR TJ,

Plaintiffs,

v.

FAIRFAX COUNTY SCHOOL BOARD;
and DR. SCOTT BRABRAND, in his official
capacity as Superintendent of the Fairfax
County School Board,

Defendants.

No. 1:21-cv-296

COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Coalition for TJ (Coalition) brings this civil rights lawsuit for declaratory and injunctive relief to vindicate the rights of Asian-American public school children in and around Fairfax County, Virginia, to compete on an equal footing for admission to the nationally-ranked Thomas Jefferson High School for Science and Technology (TJ) without regard to their race.

2. TJ is an Academic-Year Governor's School administered by Fairfax County Public Schools (FCPS). This action concerns FCPS' recently-implemented overhaul of the TJ admissions process, which eliminated the long-standing race-neutral standardized admissions test. The Coalition alleges that these changes were specifically intended to reduce the percentage of Asian-American students who enroll in TJ, with the ultimate goal of racially balancing the school according to the racial demographics of Fairfax County.

3. The Coalition's members are concerned parents who reside in and around Fairfax County. The Coalition is multi-cultural and multi-racial, and a majority of its members are Asian-

American. Many Coalition members are parents of current eighth grade students who have already been affected by the changes to the TJ admissions criteria, while others have children who will be affected in the coming years.

4. Defendants are the Fairfax County School Board and the Superintendent of FCPS, Dr. Scott Brabrand. Board Members and Superintendent Brabrand, as well as other FCPS officials, have repeatedly spoken of the need to racially balance TJ and have directed derogatory racial comments towards Asian-American families. FCPS' recent overhaul of the TJ admissions process was intended to achieve Defendants' goals of racially balancing the student population by reducing the number of Asian-American students at TJ. And it will have its desired effect. Unless enjoined by this Court, the number of Asian-American students in the incoming TJ Class of 2025 is likely to be cut in half—not because of a drop in the number of qualified Asian-American applicants, but due entirely to Defendants' stated desire to manipulate TJ's demographics.

5. Overwhelming public evidence exists that the new TJ admissions process was adopted with the purpose of disadvantaging Asian-American students and reducing Asian-American enrollment at TJ. As such, these changes violate the Equal Protection Clause.

6. The Equal Protection Clause is a promise that government at every level will treat every American as an individual, not simply as a member of his or her racial group. Policies like the one implemented by FCPS stand in direct opposition to that promise.

JURISDICTION AND VENUE

7. This action arises under the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §§ 1981 and 1983. The Court has jurisdiction over these federal claims

under 28 U.S.C. §§ 1331 (federal question) and 1343(a) (redress for deprivation of civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1)–(2). Defendants reside within this district and a substantial part of the events giving rise to this claim have occurred or will occur in the Eastern District of Virginia.

9. The challenged policy remains in effect. A live controversy exists between the parties.

PLAINTIFF

10. Plaintiff Coalition for TJ is an organization of primarily Asian-American parents with a mission to advocate for diversity and excellence at TJ. The Coalition was formed in response to FCPS’ efforts to racially balance TJ, and Coalition members regularly attend and speak at School Board meetings, organize rallies, write to School Board members and legislators, engage in public service, and educate their community on the value of merit-based admissions for specialized schools like TJ.

11. The Coalition is made up of approximately 5,000 supporters, mostly residents of Fairfax County, and many members have children enrolled in public schools in Fairfax County. Members include parents of current eighth graders who have applied to TJ and will be evaluated under TJ’s new discriminatory admissions criteria. Members also include parents of younger children who are currently part of FCPS’ Advanced Academic Programs (AAP)¹ or are enrolled

¹ FCPS’ Advanced Academic Programs (AAP) are a “continuum of advanced academic services for students K-12 that builds upon students’ individual strengths and skills and maximizes academic potential for all learners.” <https://www.fcps.edu/academics/academic-overview/advanced-academic-programs>. Students are evaluated for admission into AAP in second grade or may be referred to the program in other years. *Id.* Students qualifying for the highest AAP level, Level IV, receive full-time advanced instruction in grades 3-8 and may enroll in Honors

in similar advanced programs at other local school districts or private schools and who intend to apply to TJ when they reach eighth grade. These children will also be subject to FCPS' discriminatory admissions criteria when they are old enough to apply to TJ.

12. Without this Court's intervention, Coalition members' children will be denied the opportunity to compete for admission to TJ on an equal footing with other applicants because of their race. Thus, Coalition members "are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 342 (1977) (quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975)). The prospective relief Plaintiff seeks, if granted, will "inure to the benefit of those members of the association actually injured," and so the individual participation of each injured Coalition member is not required. *Warth*, 422 U.S. at 511, 515.

13. Several Coalition members have children who are already subject to the discriminatory admissions practices challenged in this lawsuit. Among these are Srikanth Akunuri (child S.V.A. is an eighth grader at Mercer Middle School who has applied for admission to TJ), Hanning Chen (child K.S.C. is an eighth grader at Cooper Middle School who has applied for admission to TJ), Justin Jia (child C.J. is an eighth grader at Longfellow Middle School who has applied for admission to TJ), Raja Kakayadi (child A.K. is an eighth grader at Nysmith School for the Gifted who has applied for admission to TJ), Dheeram Kallem (child T.K. is an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), Yuhong Lin (child A.Y. is

classes at their base school or attend their assigned AAP center school. *Id.* Currently, 14 of 26 FCPS middle schools offer AAP Level IV students honors programs, which are required for admission to TJ under the challenged admissions process. <https://www.fcps.edu/academics/elementary-school-academics-k-6/advanced-academics/advanced-academic-level-iv-center>.

an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), Everett Liu (child E.L. is an eighth grader at Nysmith School for the Gifted who has applied for admission to TJ), Qingying Lu (child A.G. is an eighth grader at Frost Middle School who has applied for admission to TJ), Ying Y. McCaskill (child D.M. is an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), Mahua Mitra (child S.M.K. is an eighth grader at Kilmer Middle School who has applied for admission to TJ), Hemang Nagar (child A.N. is an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), Pratyush Nutalapati (child A.N. is an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), James Pan (child H.P. is an eighth grader at Nysmith School for the Gifted who has applied for admission to TJ), Mayuri Prodhuturi (child A.B. is an eighth grader at Rocky Run Middle School who has applied for admission to TJ), Vijayram Raghavan (child V.V. is an eighth grader at Rocky Run Middle School who has applied for admission to TJ), Tilak Venigalla (child S.V. is an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), and Sampath Yarlagadda (child A.Y. is an eighth grader at Rocky Run Middle School who has applied for admission to TJ).

14. Other Coalition members have younger children who intend to apply to TJ when they reach eighth grade and will be subject to the discriminatory admissions practices challenged in this lawsuit. Among these are Srinivas Akella (child R.A. is a seventh grader at Rachel Carson Middle School and has been identified as a gifted learner and admitted into Advanced Academic Programs), Srikanth Akunuri (child S.A. is a fourth grader at Arcola Elementary School), Kamal Karnathi (child A.K. is a seventh grader at Farmwell Station Middle School and has been identified as a gifted learner), Rajiv Sharma (child P.S. is a fourth grader at Louise Archer Elementary School, has been identified as a gifted learner and admitted into Advanced Academic Programs),

Himanshu Verma (child N.V. is a sixth grader at Churchill Road Elementary School, has been identified as a gifted learner and admitted into Advanced Academic Programs), and Zhihua Zeng (child D.Z. is a seventh grader at BASIS Independent McLean, has been identified as a gifted learner and admitted into Advanced Academic Programs).

15. Rachel Carson Middle School, where the children of Coalition members McCaskill, Venigalla, Kallem, Lin, Nagar, Nutalapati, and Akella are currently students, enrolls approximately 1,474 students in grades 7 and 8. As of the 2019-2020 school year, Carson MS is 30.32% White, 46.45% Asian-American, 6.83% Black, 10.15% Hispanic or Latino, and 6.25% other.² In 2018, the most recent year for which school-level data is publicly available, Carson MS had 292 students apply for admission to TJ and 78 students accepted.

16. Longfellow Middle School, where the child of Coalition member Jia currently attends, enrolls approximately 1,329 students in grades 7 and 8. As of the 2019-2020 school year, Longfellow MS is 49.85% White, 26.35% Asian-American, 4.42% Black, 12.13% Hispanic or Latino, and 7.26% other. In 2018, Longfellow MS had 185 students apply for admission to TJ and 62 students accepted.

17. Kilmer Middle School, where the child of Coalition member Mitra currently attends, enrolls approximately 1,130 students in grades 7 and 8. As of the 2019-2020 school year, Kilmer MS is 46.01% White, 23.87% Asian-American, 4.25% Black, 18.92% Hispanic or Latino,

² School Profile, http://schoolprofiles.fcps.edu/schlprfl/f?p=108:13:::NO::P0_CURRENT_SCHOOL_ID,P0_EDSL:171,0.

and 6.94% other.³ In 2018, Kilmer MS had 126 students apply for admission to TJ and 37 students accepted.

18. Rocky Run Middle School, where the children of Coalition members Prodhuturi, Raghavan, and Yarlagadda currently attend, enrolls approximately 1,049 students in grades 7 and 8. As of the 2019-2020 school year, Rocky Run MS is 32.07% White, 44.71% Asian-American, 4.64% Black, 13.33% Hispanic or Latino, and 5.25% other.⁴ In 2018, Rocky Run MS had 175 students apply for admission to TJ and 33 students accepted.

19. FCPS students identified as gifted learners are admitted to the district's Advanced Academic Program (AAP). Each of the FCPS students of Coalition members named in this Complaint are enrolled in the district's full-time AAP, also known as Level IV, which delivers a highly challenging instructional program in four core subject areas for grades 3-8.⁵ AAP Level IV students may choose to attend honors classes at their zoned middle schools or an Advanced Academic Level IV Center instead. Rachel Carson, Kilmer, Rocky Run, and Longfellow middle schools are Advanced Academic Level IV Centers.⁶

³ School Profile,
http://schoolprofiles.fcps.edu/schlprfl/f?p=108:13:::NO::P0_CURRENT_SCHOOL_ID,P0_EDSL:071,0.

⁴ School Profile,
http://schoolprofiles.fcps.edu/schlprfl/f?p=108:13:::NO::P0_CURRENT_SCHOOL_ID,P0_EDSL:251,0.

⁵ FCPS, "Full-Time Advanced Academic Program, Grades 3-8 (Level IV)," <https://www.fcps.edu/academics/elementary-school-academics-k-6/advanced-academics/full-time-advanced-academic-program>.

⁶ <https://www.fcps.edu/academics/elementary-school-academics-k-6/advanced-academics/advanced-academic-level-iv-school>

DEFENDANTS

20. Defendant Fairfax County School Board (“the School Board”) operates FCPS, a public school system with 198 public schools in Fairfax County, Virginia.⁷ FCPS enrolls over 188,000 students in pre-kindergarten through 12th grade and is the largest public school district in the Commonwealth of Virginia. *Id.*

21. Defendant Dr. Scott Brabrand is the Superintendent of FCPS and is sued in his official capacity. As Superintendent, Dr. Brabrand is responsible for the operations of FCPS, including implementing policies enacted by the School Board. In 2020, Dr. Brabrand undertook a complete change of the TJ admissions process in order to “make TJ’s admissions better reflect the county as a whole.” He has guided the admissions changes process, worked with FCPS and TJ officials to develop a new TJ admissions plan, led virtual town hall meetings to address TJ’s demographics and the plan to change the TJ admissions process, and presented multiple iterations of a new TJ admissions plan to the School Board at working group meetings and School Board meetings.

GENERAL FACTUAL ALLEGATIONS

Thomas Jefferson High School for Science and Technology

22. TJ is the top-ranked public high school in the nation.⁸ Founded in 1985 to improve STEM education in northern Virginia, TJ enrolls approximately 1,800 students at its campus in Alexandria. The majority of TJ’s students are residents of Fairfax County, but a limited number of

⁷ FCPS, “About Us,” <https://www.fcps.edu/about-fcps>.

⁸ U.S. News & World Report, <https://www.usnews.com/education/best-high-schools/virginia/districts/fairfax-county-public-schools/thomas-jefferson-high-school-for-science-and-technology-20461>.

students from three surrounding counties (Arlington, Loudoun, and Prince William) and the City of Falls Church are also eligible for admission.

23. TJ is incredibly diverse. Its current student body is approximately 79% non-white and 21% white.⁹ The TJ Class of 2024 is 73% Asian-American, 1% Black, 3.3% Hispanic or Latino, 6% other, and 17.7% white.¹⁰ The Asian-American student population at TJ is diverse as well, with at least thirty nationalities represented, including students whose families hail from India, Pakistan, South Korea, Japan, Vietnam, China, and the Philippines.

24. TJ is one of nineteen Virginia Academic-Year Governor’s Schools, which provide “gifted high school students” with “acceleration and exploration in areas ranging from the arts, to government and international studies, and to mathematics, science, and technology.”¹¹ TJ is administered by FCPS and funded in part through the Virginia General Assembly with a special funding allocation.¹²

25. When TJ first opened its doors in 1985, Fairfax County had approximately 650,000 residents and was approximately 85% white, 6% Black, 3% Hispanic, and 4% “Asian and American Indian.”¹³ Following the growth of Northern Virginia’s science and technology sector,

⁹ FCPS, TJ School Profile, http://schoolprofiles.fcps.edu/schlprfl/f?p=108:13:::NO::P0_CURRENT_SCHOOL_ID,P0_EDSL:300,0.

¹⁰ Press Release, FCPS, *TJHSST Offers Admission to 486 Students* (June 1, 2020), <https://www.fcps.edu/news/tjhsst-offers-admission-486-students>.

¹¹ Virginia Dep’t of Education, “Academic-Year Governor’s Schools,” https://www.doe.virginia.gov/instruction/governors_school_programs/academic_year/index.shtml.

¹² Virginia Dep’t of Education, “Governor’s School Programs,” https://www.doe.virginia.gov/instruction/governors_school_programs/.

¹³ 1985 Fairfax County Profile, Fairfax County Office of Research and Statistics at II-12, https://www.fairfaxcounty.gov/demographics/sites/demographics/files/assets/fairfaxcountyprofiles/profile_1985.pdf.

the demographics of Fairfax County shifted: today, Fairfax County is home to over one million residents and is approximately 61% white, 10% Black, 16% Hispanic,¹⁴ and 19% Asian and Pacific Islander.¹⁵

Previous TJ Admissions Process

26. Prior to the challenged changes to the TJ admissions process, selection for a seat at TJ was solely merit-based. To be eligible to apply to TJ, eighth graders were required to reside in Fairfax, Arlington, Loudoun, or Prince William counties or the City of Falls Church; have completed or be enrolled in Algebra I; have a core GPA of 3.0; and pay the \$100 application fee, which could be waived for those with financial need.

27. The primary method for determining admissions was a standardized test consisting of Quant-Q, ACT Inspire Reading, and ACT Inspire Science components. The TJ admissions test is famously rigorous and competitive; many students spend months (if not years) studying for the three-part test. Test preparation was often a family affair, with families joining in to help quiz and cheer on their students. Student applicants scoring highly enough to become semi-finalists advanced to part two of the admissions process, which required two teacher recommendations, a “Student Information Sheet,” in which applicants responded to three writing prompts, and a problem-solving essay.

28. In a typical year, the 480 to 500 highest-scoring applicants received offers to attend TJ.

¹⁴ For the purposes of this data, “Hispanic persons may be of any race.” Demographic Reports 2019, County of Fairfax, Virginia, at II-6, <https://www.fairfaxcounty.gov/demographics/sites/demographics/files/assets/demographicreports/fullreport.pdf>.

¹⁵ *Id.*

FCPS Seizes Opportunity to Overhaul TJ's Admissions Process

29. In its 2020 budget bill, the Virginia General Assembly required each Academic-Year Governor's School to "set diversity goals for its student body and faculty, and develop a plan to meet said goals in collaboration with community partners at public meetings." 2020 Va. Acts 183. Reports of these efforts, due to the Governor by October 1, 2020, were required to include "utilization of universal screenings in feeder divisions; admission processes in place or under consideration that promote access for historically underserved students; and outreach and communication efforts deployed to recruit historically underserved students." *Id.* Schools were also instructed to include the "racial/ethnic make-up and socioeconomic diversity of its students, faculty, and applicants." *Id.*

30. This reporting requirement was minimal, with schools instructed that the report "should end up rather simple, sticking closely to the specific wording of the budget language, with some basic data." But Superintendent Brabrand and the School Board saw it as an opportunity to completely overhaul the TJ admissions process in order to racially balance the school's demographics, going far beyond the minimal reporting requirements requested by the Department of Education.

31. Superintendent Brabrand's initial plan, presented to the School Board on September 15, 2020, suggested eliminating the standardized admissions test, thereby radically altering what had been a fundamental part of TJ admissions. He also recommended eliminating the TJ application fee, teacher recommendations, and the problem-solving essay; and adding a student questionnaire or essay.¹⁶ The proposal created five "regional pathways," to which

¹⁶ FCPS, "TJ Admissions Merit Lottery Proposal School Board Work Session Sept. 15, 2020," [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BTGKX652F413/\\$file/TJHSST%20Admissions%20Merit%20Lottery%20Proposal.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BTGKX652F413/$file/TJHSST%20Admissions%20Merit%20Lottery%20Proposal.pdf).

applicants were assigned based on their middle school, after which admissions would be determined by a lottery in each regional pathway.¹⁷ Each regional pathway was allocated 70 seats at TJ, with additional seats for students applying from Loudoun, Arlington, and Prince William counties and the City of Falls Church.¹⁸ Region 1 included Rachel Carson Middle School, while Region 2 included both Kilmer and Longfellow middle schools.¹⁹ Region 5 included Rocky Run Middle School.²⁰ According to FCPS' projections, had the proposed changes been applied to the admissions process for the Class of 2024, Asian-American student enrollment at TJ would have dropped from 73% to 54%, while Black enrollment would have increased from 1% to 7%, Hispanic enrollment would have increased from 3% to 8%, and enrollment of students identifying as two or more races would have increased from 5% to 6%.²¹ White students would have seen the greatest gains, from 18% under the old system to 25% under the proposed changes.²²

¹⁷ *Id.* at 11-17.

¹⁸ *Id.* at 15.

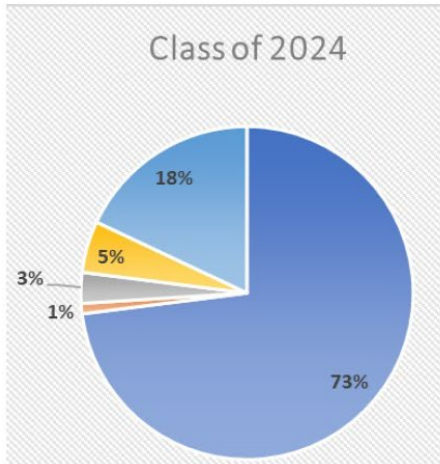
¹⁹ *Id.* at 16.

²⁰ *Id.*

²¹ *Id.* at 20.

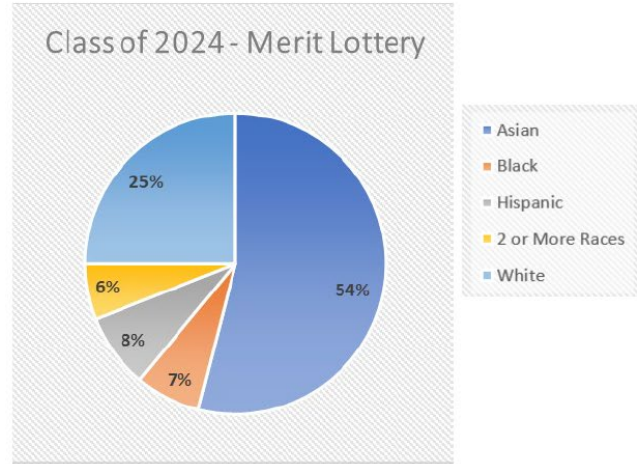
²² *Id.* at 18-20. The proposal also retroactively applied the proposed merit lottery to the Classes of 2015 and 2019. Had the proposed merit lottery been in place when those classes were admitted, Asian-American student enrollment would have shrunk 15% and 18%, respectively. No other single racial group would have experienced drops in enrollment.

Percent of Offered Students Using Current Holistic Process



Economically Disadvantaged: 0.6%
English Language Learners: 0.6%

Percent of Offered Students Using Merit Lottery



Economically Disadvantaged: 10.3%
English Language Learners: 3.4%

Source: FCPS

32. Superintendent Brabrand presented three modified versions of his initial proposal throughout the fall of 2020. Each proposal included elimination of the standardized admissions exam. And in each proposal, the regional pathways remained the same.

33. On October 6, 2020, the School Board hastily accepted Superintendent Brabrand’s recommendation to eliminate the standardized TJ admissions test, which was scheduled to take place the next month.²³ Despite the magnitude of the decision to eliminate the longstanding TJ admissions test and the immediate impact on the hundreds of eighth grade students who had spent

²³ Minutes, Fairfax County School Board, Oct. 6, 2020, [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BWXV9A7A33D8/\\$file/10-06-20%20EWS%20FINAL.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BWXV9A7A33D8/$file/10-06-20%20EWS%20FINAL.pdf).

months preparing, the vote was held at a “work session,” not a regular school board meeting. *Id.* School Board work sessions typically do not include votes, and there is no opportunity for public comment.

34. The October 6, 2020, work session’s published agenda did not advise the public that the School Board would vote on any changes to the TJ admissions policy; rather, it stated: “Today’s presentation will provide an update to the September 15, 2020, work session on the effort of continuous improvement of the Admissions Process for [TJ]. The presentation will provide information regarding the current admissions process and proposed changes for future admissions processes.”²⁴ Nevertheless, without hearing public comment, the School Board voted at the meeting to eliminate the TJ admissions test.

35. At its regular school board meeting two days later, on October 8, 2020, the School Board did not vote to ratify or in any way affirm its vote at the working session.²⁵ Instead, a majority of School Board members voted to defeat a measure that would have called for further public engagement on the TJ admissions process.²⁶

²⁴ Available at <https://go.boarddocs.com/vsba/fairfax/Board.nsf/goto?open&id=BRDK8M4D80B8>.

²⁵ Minutes, Fairfax County School Board, Oct. 8, 2020, [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BXLT2W693F5A/\\$file/10-08-20%20ERM%20FINAL.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BXLT2W693F5A/$file/10-08-20%20ERM%20FINAL.pdf).

²⁶ Fairfax County School Board, Agenda Item Details for October 8, 2020, Regular Meeting, <https://go.boarddocs.com/vsba/fairfax/Board.nsf/goto?open&id=BRDK8M4D80B8> (The defeated motion read: “I move to direct the Superintendent to develop and implement a public engagement plan regarding TJ admissions prior to bringing the updated TJ plan to the Board in December. This plan should allow for more thorough community input and dialogue on TJ admissions. This public engagement can include public hearings, interviews, panel and focus group discussions and other forms of collaborative discourse. At minimum input should be solicited on how best to determine merit, design an admissions process aimed at ensuring the demographics at TJ are more representative of our regional student demographics, and how to communicate the TJ opportunity to our communities.”).

36. The School Board voted to adopt the new, challenged admissions policy on December 17, 2020.²⁷ The new admissions process was immediately implemented and applies to the incoming TJ freshman Class of 2025 and to future years. Under the new process:

The top 1.5 percent of the eighth grade class at each public middle school meeting the minimum standards will be eligible for admission. ¶ A holistic review will be done of students whose applications demonstrate enhanced merit; 550 seats will then be offered to the highest-evaluated students. Students will be evaluated on their grade point average (GPA); a portrait sheet where they will be asked to demonstrate Portrait of a Graduate attributes and 21st century skills; a problem-solving essay; and experience factors, including students who are economically disadvantaged, English language learners, special education students, or students who are currently attending underrepresented middle schools.²⁸

The new admissions process does not rely on Superintendent Brabrand’s proposed regional pathways, but its limitation on how many students may be accepted from each middle school, when coupled with the concentration of Asian-American students at Carson, Kilmer, Rocky Run, and Longfellow middle schools and their history of sending high numbers of students to TJ, will accomplish a similar racial balancing.

School Board Members and Superintendent Brabrand Display Clear Racial Motive in Changing TJ’s Admissions Process

37. Bias against Asian-American students at TJ did not arise overnight. For example, in 2018, a retired Rachel Carson Middle School teacher testified before the Virginia General Assembly that the parents of Asian-American students are “ravenous” and implied they break

²⁷ Minutes, Fairfax County School Board, Dec. 17, 2020, [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BY5JH34D3388/\\$file/12-17-20%20ERM%20FINAL.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BY5JH34D3388/$file/12-17-20%20ERM%20FINAL.pdf).

²⁸ *School Board Choses Holistic Review as New Admissions Policy for TJHSST*, FCPS News Release, Dec. 18, 2020, https://www.fcps.edu/news/school-board-chooses-holistic-review-new-admissions-policy-tjhsst?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

immigration laws to move to the United States “however they come here” from India in order to enroll their children in TJ.²⁹

38. These racially discriminatory comments were echoed by members of a statewide summer 2020 working group convened by Virginia Secretary of Education Atif Qarni to address diversity, equity, and inclusion at Virginia Governor’s Schools. One member of the working group, Dr. Robert Lowerre, Director of the Maggie L. Walker Governor’s School in Richmond, noted that “communities of people,” meaning the Asian-American community, had figured out how to push their students into Governor’s Schools. State Delegate Mark Keam was more incendiary, telling the group of the “unethical ways” Asian-American parents “push their kids into [TJ],” when those parents are “not even going to stay in America,” but instead are “using [TJ] to get into Ivy League schools and then go back to their home country.”

39. Superintendent Brabrand, TJ Principal Ann Bonitatibus, and School Board member Karen Keys-Gamarra were members of the working group. They carried the tone of racial discrimination back to Fairfax County, where Brabrand and the School Board began work on the challenged changes to the TJ admissions process.

40. On June 7, 2020, Bonitatibus emailed TJ students and family members, noting that TJ “is a rich tapestry of heritages; however, we do not reflect the racial composition in FCPS. Our 32 black students and 47 Hispanic students fill three classrooms. If our demographics actually represented FCPS, we would enroll 180 black and 460 Hispanic students, filling nearly 22

²⁹ *Retired FCPS Teacher Singles Out Students from India and Calls Parents “Ravenous,”* YouTube (Sept. 23, 2020), https://www.youtube.com/watch?v=0rWdIXuYFqA&ab_channel=AsraNomani.

classrooms.”³⁰ This email put the focus squarely on race and the racial balance at TJ, foreshadowing changes to come.

41. In an August 2020 town hall meeting hosted by the Fairfax County, Virginia, chapter of the NAACP, Brabrand complained that TJ students spent “thousands upon thousands” of dollars on test prep for the TJ admissions test, laying the groundwork for negative stereotyping of TJ’s majority Asian-American student body.³¹ Later, in a September 8, 2020, listening session for students of TJ and the Maggie L. Walker School, Virginia Secretary of Education Atif Qarni reinforced Brabrand’s stereotypes, comparing test preparation to illegal “performance enhancement drugs.”³²

42. On September 15, 2020, Superintendent Brabrand presented the first admissions change proposal to School Board at a work session.³³ Brabrand stated the “need to recognize” that “TJ should reflect the diversity of Fairfax County Public Schools, the community, and of Northern Virginia,” lamenting that “the talent at Thomas Jefferson currently does not reflect the talent that exists in FCPS.”³⁴ These assertions regarding “diversity” and “talent” refer to the majority Asian-American composition of TJ’s student body.

³⁰ Ann N. Bonitatibus, Message from the Principal, June 7, 2020, <https://content.govdelivery.com/accounts/VAEDUFCPS/bulletins/28f8d9f>.

³¹ Fairfax County NAACP, *Town Hall on Systemic Racism*, Facebook (Aug. 5, 2020), https://www.facebook.com/watch/live/?v=650397622538856&ref=watch_permalink at 1:28:31.

³² *Virginia Education Secretary Compares Test Prep to Using Illegal Performance Enhancing Drugs*, from Listening Session with TJ Students held, YouTube Sept. 8, 2020 (Sept. 13, 2020), https://www.youtube.com/watch?v=w5RcAhRyB6g&ab_channel=AsraNomani.

³³ *FCPS School Board Work Session – 9-15-20 – TJ Admissions Review*, YouTube (Sept. 15, 2020), https://www.youtube.com/watch?v=n3FS9TY0lcg&list=PLSz76NCRDYQF3hPS2qS2SGEcoO4__Yd7Z&index=51&ab_channel=FairfaxCountyPublicSchools.

³⁴ *Id.* at 4:31–5:04.

43. Brabrand showed School Board members a slide depicting the demographics of the FCPS student population in 2019³⁵ before turning the presentation over to FCPS Chief Operating Officer Marty Smith, who started by echoing Brabrand’s discriminatory assertions that “the diversity at TJ doesn’t currently reflect the diversity of Northern Virginia and the talent at TJ does not reflect the talent in Fairfax County Public Schools.”³⁶ Moving on to a slide that showed 15 years of TJ admissions data by race, including the trend of more Asian-American students winning seats at TJ, Smith noted that “[i]t’s important to note that some of the gaps that we’ve seen over time for some of our groups of students have only gotten wider with regard to the applicant pool.”³⁷ He noted that “past boards have been focused on diversity at TJ for quite some time,”³⁸ but despite previous changes to the TJ admissions process, “we haven’t realized the outcomes that we were looking for, which is why we’re bringing this proposal to [the School Board] today.”³⁹ The “outcomes” Smith was looking for refers to the racial composition to TJ.

44. Dr. Ann Bonitatibus, TJ’s Principal, also attended the September 15 working group and noted that while TJ is a “wonderfully diverse school,” FCPS was making “efforts to ensure that we are more demographically representative of the region.”⁴⁰ In fact, Bonitatibus shared that one of the reasons she was attracted to the role at TJ “was the notion that the school could be more represented in its region.”⁴¹ She stated that “we are all united in believing that there is a statistically

³⁵ *Id.* at 6:00.

³⁶ *Id.* at 7:31.

³⁷ *Id.* at 7:58.

³⁸ *Id.* at 9:15.

³⁹ *Id.* at 9:43.

⁴⁰ *Id.* at 33:25.

⁴¹ *Id.* at 1:28:40.

significant enough difference in the [racial] disparities that we're seeing that action does need to be taken. . . . And I am fully supportive of FCPS efforts to advance the representative demographics at our school.”⁴² Bonitatibus’ talk of “representation” and the “efforts to advance the representative demographics at our school” clearly reference the Board’s attempts to racially balance the student body at TJ.

45. When asked to report on her experience at the state working group over the summer, Board member Karen Keys-Gamarra stated “there was pretty much a unanimous view about the culture of these schools being not as healthy as I know all of us on this board would like to hear from our students.”⁴³ Board member Melanie Meren went a step further and described majority-Asian-American TJ’s culture as “toxic”⁴⁴ for Black students. Member Karl Frisch decried “the culture that we allow in the system.”⁴⁵ At the September 15 meeting alone, concern for TJ’s “culture” was referenced ten times. On information and belief, the Board Members’ repeated references to TJ’s toxic culture refers to the racist “Tiger Mom” stereotype of Asian-American parents who push their children to achieve academic success at all costs, as well as the racist stereotype of Asian-Americans being anti-Black.

46. At the school board work session on October 6, 2020, when the Board voted to eliminate the TJ admissions test, the discussion between the Board and Brabrand make it clear that racial balancing was the goal. Brabrand noted that the proposed changes to the admissions process, which eliminated the race-neutral admissions test, “eliminat[es] the testing component that

⁴² *Id.* at 1:29:37.

⁴³ *Id.* at 44:50.

⁴⁴ *Id.* at 1:24:00.

⁴⁵ *Id.* at 2:09:52.

squeezed out talent and squeezed out diversity in our system.”⁴⁶ Principal Bonitatibus again highlighted the desire for a “student body that more closely aligns with the representation in FCPS” and “Northern Virginia.”⁴⁷ Board Member Abrar Omeish stated that a key point was to “make sure there’s representation” that “should be proportional to the population numbers” of Fairfax County.⁴⁸

47. The School Board and FCPS officials repeatedly discussed the TJ admissions test—the test by which Asian-American students earned their places at TJ—as biased, resulting in presence at TJ of “students who have been [in] Test Prep since second grade.”⁴⁹ This language directly attacks the Asian-American families whose children hope to apply to TJ, demeaning students’ hard work and families’ sacrifices as “pay to play.”⁵⁰ Board Member Keys-Gamarra recognized this discriminatory language towards Asian-American families:

And I want to say, just as we are concerned about certain communities feeling that we are maligning them by talking about tests, we must be very careful and we must be cognizant of how demeaning these types of comments are and that many people consider these comments to be rooted in racism. I’m not saying it’s intentional, but we need to be mindful.”⁵¹

⁴⁶ Fairfax County Public Schools, *FCPS School Board Work Session TJ Admission 10-6-20*, YouTube (Oct. 6, 2020), https://www.youtube.com/watch?v=FgTgmNYUw88&ab_channel=FairfaxCountyPublicSchools at 6:57, 10:12.

⁴⁷ *Id.* at 29:41.

⁴⁸ *Id.* at 1:02:50.

⁴⁹ *Id.* at 3:40:00.

⁵⁰ *Id.* at 36:43.

⁵¹ *Id.* at 2:58:12.

Projected Effects of TJ Admissions Process Changes

48. After the initial proposal to the School Board, Superintendent Brabrand's subsequent presentations did not include projected demographic outcomes of the proposed admissions policy changes. However, analysis of publicly available data shows that Asian-American enrollment—and only Asian-American enrollment—will markedly decline at TJ under the new admissions policy.

49. Under the new admissions policy, each middle school is allocated seats in the incoming TJ freshman class equivalent to 1.5% of the middle school's eighth grade enrollment, regardless of how many students each middle school has historically sent to TJ. Four middle schools—Rachel Carson, Longfellow, Rocky Run, and Kilmer—traditionally account for the majority of TJ admissions and also have higher Asian-American student populations than most other FCPS middle schools. By severely limiting the number of students who can be accepted at TJ from those middle schools, which by proxy limits the number of qualified Asian-American applicants, future TJ classes will have a radically different racial composition, by design.

50. For example, in the Class of 2022, admitted under the previous admissions system, Rachel Carson MS had 78 students accepted to TJ out of an eighth grade class of 804 students (46% of whom were Asian-American). That means that nearly 10% of the school's eighth graders were accepted to TJ. Under the new admissions system, Rachel Carson MS would have been allocated just 12, or 1.5% of its total eighth grade population.

51. Students at Longfellow MS would similarly have seen their chances for a seat at TJ drop dramatically—the TJ class of 2022 includes 62 Longfellow alumni out of an eighth grade class of 669 (27% of whom were Asian-American). Had the new admissions system been in place, Longfellow would have been capped at 10 TJ seats.

52. Overall, Plaintiff's data analysts project that Asian-American student enrollment at TJ will drop from 73% under the merit-based race-blind admissions system to 31% under the new racial-balancing admissions system for the Class of 2025.⁵² No other racial group is projected to lose seats. The greatest beneficiary of the new admissions system in terms of increased population will be white students.

53. As a result of the new policy designed to reduce Asian-American enrollment at TJ, qualified TJ applicants among the children of Coalition for TJ members will be denied admission to TJ in this and future years.

CAUSE OF ACTION

(Violation of the Equal Protection Clause of the Fourteenth Amendment, through 42 U.S.C. § 1983)

54. Plaintiff hereby realleges each and every allegation contained in Paragraphs 1 through 53 as though fully set forth herein.

55. The Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

56. 42 U.S.C. § 1983 provides in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

⁵² In reaching this projection, Coalition data analysts assumed that the holistic evaluation component of the challenged admissions process will act to keep the racial distribution of students selected for TJ similar to the racial distribution of students eligible to apply for TJ, which is 31% Asian-American, 5% Black, 8% Hispanic or Latino, 48% white, and 8% other. While the challenged admissions process' problem solving essay may increase the number of Asian-American and white students selected, that effect will be countered by the inclusion of "experience factors" in the holistic evaluation.

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

57. Defendant Fairfax County School Board is a “person” within the meaning of 42 U.S.C. § 1983, *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 663 (1978), as is Defendant Superintendent Brabrand, who is sued in his official capacity for declaratory and injunctive relief, *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 n.10 (1989).

58. Defendants have acted and are acting “under color of state law” within the meaning of Section 1983.

59. A facially neutral state action violates the Equal Protection Clause when it is enacted with a racially discriminatory purpose. *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 264–65 (1977). A racially discriminatory purpose does not imply any animus on the part of the decisionmaker towards a particular racial group. *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 233 (4th Cir. 2016). Nor does it require a showing that race was the predominant consideration of the decisionmakers. *Arlington Heights*, 429 U.S. at 265. A racially discriminatory purpose simply implies that the decisionmakers acted “at least in part ‘because of,’ not merely ‘in spite of,’ [the challenged policy’s] adverse effects upon an identifiable group.” *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

60. In changing the TJ admissions criteria to disadvantage Asian-American students, Defendants acted with a racially discriminatory purpose.

61. Defendants have been forthright that the changes to the TJ admissions policy are intended to reduce the proportion of Asian-American students enrolled at TJ because they are “overrepresented” compared to the rest of FCPS. The public comments and writings of Dr. Brabrand and his staff, as well as those of multiple School Board members, indicate that the challenged admissions policy is intended to act as a proxy in order to racially balance TJ, using

the racial demographics of FCPS as a baseline. Even if Defendants had additional, race-neutral motives for the TJ admissions policy changes, race was the dominant concern of Dr. Brabrand and members of the School Board in changing the TJ admissions policy.

62. The new TJ admissions process intentionally harms Asian-American students—indeed, it must do so in order to succeed.

63. The new TJ admissions process is subject to strict scrutiny because, although facially race-neutral, it was enacted with discriminatory intent.

64. Defendants do not have a compelling governmental interest that justifies racially discriminatory action toward Asian-American students, including children of Coalition members.

65. Defendants' revision of the TJ admissions policy is not narrowly tailored to further any governmental interest.

66. Defendants' revision of the TJ admissions policy is not necessary to remedy past discrimination for which the government is responsible.

67. Because Defendants' changes to TJ's admissions process were enacted for a racially discriminatory purpose and further no compelling government interest, they violate the Equal Protection Clause.

68. Plaintiff and Plaintiff's members have been and will be harmed by Defendants' revisions to the TJ admissions criteria.

69. Plaintiff is entitled to injunctive and declaratory relief enjoining Defendants from continuing to use the challenged admissions process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

1. An entry of judgment declaring that Defendants' changes to TJ's admissions process violate the Equal Protection Clause.
2. An entry of a permanent injunction against Defendants prohibiting them from continuing to enforce the challenged admissions procedure.
3. An entry of an order requiring Defendants to return to the admissions procedure in place for entry into TJ in the fall of 2020.
4. An award of attorney's fees and costs in this action pursuant to 42 U.S.C. § 1988.
5. An award of nominal damages in the amount of \$1.00.
6. An award of any further legal or equitable relief this Court may deem just and proper.

Dated: March 10, 2021.

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