

SCOTUS Rules that Race-Conscious Admissions Violate the 14th Amendment

On June 29, 2023, the United States Supreme Court ruled that colleges and universities can no longer consider race as a specific basis in admissions. In what will likely alter the future of affirmative action in higher education, the justices ruled that the admissions programs at the University of North Carolina (UNC) and Harvard College violated the Constitution's Equal Protection Clause of the Fourteenth Amendment, which bars racial discrimination by government entities.

In the cases of [*Students for Fair Admissions Inc. v. University of North Carolina and Students for Fair Admissions Inc. v. President & Fellows of Harvard College*](#), the Supreme Court was asked to decide (i) whether it should overrule *Grutter v. Bollinger* and hold that institutions of higher education cannot use race as a factor in admissions; (ii) whether Harvard College is violating Title VI of the Civil Rights Act by penalizing Asian American applicants, engaging in racial balancing, overemphasizing race, and rejecting workable race-neutral alternatives; and (iii) whether a university can reject a race-neutral alternative because it would change the composition of the student body, without proving that the alternative would cause a dramatic sacrifice in academic quality or the educational benefits of overall student-body diversity.

Writing for the majority, Chief Justice John Roberts, echoing the heartbeat of *Brown v. Board of Education*, stated “the inherent folly of [*Plessy v. Ferguson*] — of trying to derive equality from inequality — soon became apparent” as history demonstrates that “separate cannot be equal.” In a historical review of cases that followed *Brown*, Justice Roberts noted that many cases “reflect the ‘core purpose’ of the Equal Protection Clause: ‘doing away with all governmentally imposed discrimination on race.’”

Harvard and UNC used race ‘plus’ considerations in their college admissions programs, which the Court held violated the Constitution’s Equal Protection Clause. Race ‘plus’ admissions considers race at every stage of the admissions process, meaning minority applicants may receive a ‘plus’ or ‘determinative tip’ throughout the process. The Court found that race ‘plus’ admissions programs lack “sufficiently focused and measurable objectives warranting the use of race,” therefore such programs “unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful endpoints.”

Further, neither Harvard’s nor UNC’s admissions processes pass a strict scrutiny test. There is no clear way to measure if the goals are being effectively met; the programs “fail to articulate a meaningful connection between the means they employ and the goals they pursue;” and the universities’ methods of measuring racial configuration were found to be both imprecise and irregular. For example, representation of South Asian and East Asian students are considered together at Harvard, but Hispanic applicants’ ethnicity remained “arbitrary and undefined” during the admissions process. Therefore, the programs failed to show “an exceedingly persuasive justification that is measurable and concrete enough to permit judicial review.”

Moving forward, striving for diversity can still be a viable goal for university admissions to pursue. The Court emphasized that nothing in the opinion prohibits a university from considering how an applicant’s race has impacted their life through discrimination or inspiration and that *consideration* of race is not unconstitutional. But race alone cannot be the motivating factor for admitting an applicant. To achieve a diverse student body that produces culturally-

aware members of society, college admissions can examine the diversity of an applicant's culture, ethnicity, race, economic background, family upbringing, and other factors to determine if that individual's unique worldview will help to broaden the learning environment of the university.

The long-term effects of the decision will begin to unfold in the upcoming college admissions cycle but will also pave the way for other challenges in employment practices and DEI programs. As the admissions landscape changes, continue to check back for up-to-date guidelines and considerations.

For more information about the future of higher education admissions and how it may affect your institution, please reach out to [Jeffrey Maddux](#) or [Kathleen Siciliano](#).