Supreme Court Ends Considerations of Race in College Admissions

Students for Fair Admissions, Inc. v. President & Fellows of Harvard College, 143 S. Ct. 2141 (June 29, 2023)

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In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, the U.S. Supreme Court held that the raced-based admissions policies of Harvard College and the University of North Carolina (UNC) violated the Equal Protection Clause of the Fourteenth Amendment.

Both Harvard and UNC used highly selective processes for screening applicants. Initial reviewers scored an applicant in various categories, including academics, personal experiences, and athletic involvement. But both Harvard and UNC permitted initial reviewers to consider race when reviewing or recommending the applicant for admission. Later stages of the application process also considered race. For example, at the last stage of Harvard's admissions process, students at risk of being cut were placed on a list with four categories: legacy status, eligibility for financial aid, athletics status, and race. And to prevent drop-offs in minority admissions, race could constitute a more significant consideration for many minority applicants that were at risk of being cut.

Students for Fair Admissions, a non-profit organization, sued both Harvard and UNC on the grounds that their admissions programs violated Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause. The district courts in both cases determined that Harvard's and UNC's admissions programs were permissible under Supreme Court precedent. The First Circuit affirmed in the Harvard case, but the U.S. Supreme Court granted certiorari for the UNC case before the Fourth Circuit issued its judgment. In a 6-3 decision, with the majority opinion authored by Chief Justice Roberts, the Supreme Court held that the admissions programs of both Harvard and UNC violated the Equal Protection Clause. The Court analyzed the programs against three requirements of the

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Equal Protection Clause: whether the programs can survive "strict scrutiny" review; whether they use race as a negative or stereotype; and whether they have an "endpoint." The majority concluded that the admissions programs failed all three requirements.

First, the majority determined that the programs could not survive strict scrutiny because the stated goals for using race—such as training new leaders and acquiring diverse perspectives—cannot be meaningfully evaluated by courts. While acknowledging that "these are commendable goals," the Court determined "they are not sufficiently coherent for purposes of strict scrutiny." As the Court explained, "[I]t is unclear how courts are supposed to measure any of these goals, or if they could, to know when they have been reached so that racial preferences can end." The Court also faulted these programs for "fail[ing] to articulate a meaningful connection between the means they employ and the goals they pursue." The Court reasoned that the programs simply "measure the racial composition of their classes using racial categories that are plainly overbroad (expressing, for example, no concern whether South Asian or East Asian students are adequately represented as 'Asian'); arbitrary or undefined (the use of the category 'Hispanic'); or underinclusive (no category at all for Middle Eastern students)."

Second, the Court held that the raced-based admissions used race "as a negative" because "[c]ollege admissions are zero-sum, and a benefit provided to some applicants but not to others necessarily advantages the former at the expense of the latter." The Court also determined that the programs impermissibly used stereotypes by "engag[ing] in the offensive and demeaning assumption that students of a particular race, because of their race, think alike."

Third, the Court held that the programs' stated endpoints—such as when meaningful diversity is achieved—amounted to "outright racial balancing," which the Court stated has long been unconstitutional. The Court summed up its holding this way: "Eliminating racial discrimination means eliminating all of it."

Justices Sotomayor and Jackson dissented (with Justice Jackson participating only in the UNC case), joined by Justice Kagan. Justice Sotomayor did not mince words: "th[e] Court overrule[d] decades of

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precedent and impose[d] a superficial rule of race blindness on the Nation." "The majority's vision of race neutrality," she argued, "will entrench racial segregation in higher education because racial inequality will persist so long as it is ignored." Justice Kagan agreed, writing: "With let-them-eat-cake obliviousness, today, the majority pulls the ripcord and announces 'colorblindness for all' by legal fiat. But deeming race irrelevant in law does not make it so in life." In Justice Kagan's assessment, "[t]he best that can be said of the majority's perspective is that it proceeds (ostrich-like) from the hope that preventing consideration of race will end racism."

Key Takeaways

- Although the Supreme Court's decision specifically addressed the admissions programs for Harvard and UNC, its reasoning effectively ends affirmative action in college admissions.
- The Court explicitly exempted military academies from its decision "in light of the[ir] potentially distinct interests."
- The Court's decision still permits colleges to consider the effects of race in an applicant's life, explicitly providing: "nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise."

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