SFFA v. Harvard

DEI Working Group

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Roadmap

- Background
- Court opinion
- Concurring and dissenting opinions
- Observations and takeaways

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The Parties

- Plaintiff – Students for Fair Admissions, Inc. (SFFA)
  - Advocacy organization dedicated to eliminating racial preferences in college admissions.
- Defendant – Harvard College
  - Undergraduate college at Harvard University, a private Ivy League institution in Cambridge, MA.
- Defendant – University of North Carolina (UNC)
  - Public institution in Chapel Hill, North Carolina.

Procedural History

- In 2014, SFFA filed separate lawsuits against Harvard and UNC.

- SFFA alleged that the admissions processes at both schools violated the Equal Protection Clause of the Fourteenth Amendment as well as Title VI of the Civil Rights Act of 1964.

- Harvard and UNC prevailed in district court.

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Procedural History, cont.

- First Circuit affirmed the Harvard decision.
- SFFA appealed to the Supreme Court.
- Supreme Court combined the cases prior to a Fourth Circuit decision in the UNC case.
- Oral arguments held October 31, 2022. Opinions issued June 29, 2023. Citation: 600 U.S. 181 (2023).

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Facts

- Both Harvard and UNC are highly selective.
  - Harvard acceptance rate: ~ 3%
  - UNC acceptance rate: ~ 10%
- Both institutions used race as a factor in admissions.
- Racial "tips" for black and Hispanic students are sometimes a determinative factor in admissions.
- SFFA alleged that racial preferences disadvantaged applicants who didn't receive a racial "tip."

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Applicable Law

- Equal Protection Clause, U.S. Const. amend. XIV
  - No **state** shall "deny to any person within its jurisdiction the **equal protection of the laws**."

- Title VI, Civil Rights Act of 1964
  - "No person in the United States shall, on the **ground of race, color, or national origin**, be **excluded** from participation in, be **denied** the benefits of, or be **subjected to discrimination** under **any program or activity receiving Federal financial assistance**."

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Prior Precedent

- Supreme Court previously found that while racial **quotas** are unconstitutional, race could be a factor in admissions because student body diversity is a **compelling state interest**.
  - *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).
  - *Grutter v. Bollinger*, 539 U.S. 306 (2003).

- However, Court also said that race-conscious admissions programs must have a "**termination point**."
  - "We expect that 25 years from now, the use of racial preferences will **no longer be necessary** to further the interest approved today." *Grutter*, 539 U.S. at 343.

Strict Scrutiny

- Form of judicial review used to determine the constitutionality of **government action** involving a **suspect classification**, such as race.

- **Presumption** of unconstitutionality.

- To overcome presumption, the action must:
  - Be ***narrowly tailored*** to further a ***compelling government interest***; and
  - Be the ***least restrictive means necessary*** to further the interest.

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The Court Opinion

- Drafted by Chief Justice Roberts.
- Joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett.
- Held that **race-conscious admissions are unconstitutional under the Equal Protection Clause**.

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The Court Opinion – Rationale

- Equal Protection Clause is "**universal in application**."
- Trying to "derive equality from inequality" is "inherent folly."
- "Eliminating racial discrimination means eliminating all of it."
- "**College admissions are zero-sum**. A benefit provided to some applicants but not to others necessarily **advantages the former group at the expense of the latter**."

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Rationale, cont.

- Race-conscious admissions programs **don't satisfy strict scrutiny**.

- Harvard defined its **compelling interests** as:
  - Training future leaders in the public and private sectors.
  - Preparing graduates to adapt to an increasingly pluralistic society.
  - Better educating students through diversity.
  - Producing new knowledge stemming from diverse outlooks.

Rationale, cont.

- UNC defined its **compelling interests** as:
  - Promoting the robust exchange of ideas.
  - Broadening and refining understanding.
  - Fostering innovation and problem-solving.
  - Preparing engaged and productive citizens and leaders.
  - Enhancing appreciation, respect, empathy, and cross-racial understanding.
  - Breaking down stereotypes.

- Court: These goals all sound good, but how are we supposed to **measure** them?

Rationale, cont.

- "Even if these goals could somehow be measured, moreover, how is a court to know when they have been reached, and when the perilous remedy of racial preferences may cease?"

- Institutions failed to "articulate a **meaningful connection between the means they employ and the goals the pursue**."
  - How are racial preferences ***necessary***, under strict scrutiny, to accomplish any of the goals?

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Rationale, cont.

- In conclusion: "Both programs lack **sufficiently focused and measurable objectives warranting the use of race**, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points."

- However, "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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Concurring Opinion by Thomas

- The Constitution is **colorblind**.

- "Universities' discriminatory policies **burden millions of applicants** who are not responsible for the racial discrimination that sullied our Nation's past."

- "Today's 17-year-olds…did not live through the Jim Crow era, enact or enforce segregation laws, or take any action to oppress or enslave the victims of the past. Whatever their skin color, today's youth simply are not responsible for instituting the segregation of the 20th century, and they do not **shoulder the moral debts of their ancestors**."

Thomas, cont.

- "Racialism simply cannot be undone by different or more racialism."

- "This vision of meeting social racism with **government-imposed racism** is thus self-defeating, resulting in a never-ending cycle of victimization. There is no reason to continue down that path. In the wake of the Civil War, the Framers of the Fourteenth Amendment charted a way out: a colorblind Constitution that requires the government to, at long last, **put aside its citizens' skin color and focus on their individual achievements**."

Concurring Opinion by Gorsuch

- Joined by Justice Thomas.
- These cases should be decided under Title VI alone. No need to jump to the Constitution.
- Settled practice of courts is to **avoid constitutional questions** when a case can be **decided on statutory grounds**.

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Gorsuch, cont.

- Harvard is private!

- "The Equal Protection Clause operates on States. **It does not purport to regulate the conduct of private parties**. By contrast, Title VI applies to **recipients of federal funds** – covering not just many state actors, but many private actors too. In this way, **Title VI reaches entities and organizations that the Equal Protection Clause does not**."

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Gorsuch, cont.

- Both Harvard and UNC **elect to receive millions in federal funding** annually.

- "Title VI prohibits a recipient of federal funds from intentionally treating **one person worse than another similarly situated person** because of his race, color, or national origin."

- Nothing in Title VI endorses racial discrimination **to any degree or for any purpose**.

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Concurring Opinion by Kavanaugh

- Analyzes strict scrutiny requirements in more detail.

- "Narrow tailoring requires courts to examine, among other things, whether a racial classification is '**necessary**' – in other words, whether **race-neutral alternatives could adequately achieve the governmental interest**."

- Universities can "act to undo the effects of past discrimination in **many permissible ways** that do not involve **classification by race**."

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Dissenting Opinion by Sotomayor

- Joined by Justice Kagan (both Harvard and UNC) and Justice Jackson (UNC only).
  - Justice Jackson recused herself from the Harvard case because she was a member of Harvard's Board of Overseers.

- Equal Protection Clause is a **guarantee of racial equality**, and "this guarantee can be **enforced through race-conscious means** in a society that is not, and never has been, colorblind."

Sotomayor, cont.

- Because society isn't colorblind, institutional admission policies need to take that into account.
- Colorblindness as a constitutional principle is "superficial" in an "**endemically segregated society**."
- The same Congress that adopted the Fourteenth Amendment enacted several **race-conscious laws** to improve conditions for freedmen.

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Sotomayor, cont.

- Disagrees with Court opinion that the institutions' admissions policies don't satisfy strict scrutiny.

- It is an "objective of the highest order, a 'compelling interest' indeed, that universities **pursue the benefits of racial diversity** and ensure that 'the diffusion of knowledge and opportunity' is **available to students of all races**."

Sotomayor, cont.

- "Entrenched racial inequality remains a reality today….**Ignoring race will not equalize a society** that is racially unequal. What was true in the 1860s, and again in 1954, is true today: **Equality requires acknowledgment of inequality**."

- "Acknowledging the reality that **race has always mattered and continues to matter**, these universities have established **institutional goals of diversity and inclusion**."

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Sotomayor, cont.

- The Court opinion acknowledges that the Equal Protection Clause **permits racial classifications** if "they advance a compelling interest in a narrowly tailored way."

- "At bottom, without any new factual or legal justification, the Court **overrides** its longstanding holding that **diversity in higher education is of compelling value**."

- Race is merely one factor in a "multidimensional system" that "benefits all students."

Sotomayor, cont.

- "Today's decision further entrenches racial inequality by making these **pipelines to leadership less diverse**. A college degree, **particularly one from an elite institution**, carries with it the benefit of powerful networks and the opportunity for socioeconomic mobility. Admission to college is therefore often the **entry ticket to top jobs** in workplaces where **important decisions are made**."

- "The Court ignores the **dangerous consequences** of an America where its **leadership does not reflect the diversity of the People**."

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Dissenting Opinion by Jackson

- Applies to UNC decision only.
- Joined by Justices Sotomayor and Kagan.
- "**Gulf-sized race-based gaps** exist with respect to the **health, wealth, and well-being** of American citizens. They were created in the distant past, but have indisputably been **passed down to the present day** through the generations. Every moment these gaps persist is a moment in which this great country falls short of actualizing one of its foundational principles – the 'self-evident' truth that **all of us are created equal**."

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Jackson, cont.

- Median wealth of black families = $24,000; of white families, $188,000.

- Median income of black households = $45,438; of Latino households, $56,113; of white households, $76,057; and of Asian households, $98,174.

- Wealth disparities exist at every income and education level.

Jackson, cont.

- UNC's admissions process takes into account an applicant's opportunities and **defines diversity broadly**, considering not only race, but also socioeconomic status, first-generation college status, political beliefs, religious beliefs, and diversity of thoughts, experiences, ideas, and talents.

- Race-conscious admissions programs "respond to **deep-rooted, objectively measurable problems**."

Jackson, cont.

- "Deeming race irrelevant in law does not make it so in life."

- The merits of an applicant "**cannot be fully determined without understanding that individual in full**," which includes understanding the applicant's advantages and disadvantages in life. Race is part of that.

Some Observations

- All justices agree that diversity as a value has merit.
- No justice argues that racial discrimination is a thing of the past.
- No justice argues that we're not still living with the consequences of history.
- The disagreement is over what race-conscious admissions can accomplish.

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Observations, cont.

Essentially:

- Conservative justices believe that race-conscious admissions aren't ***necessary*** to achieve institutional goals such as diversity.
- Liberal justices believe that race-conscious admissions ***are*** necessary.
- But the justices all seem fine with the institutional goals.

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Observations, cont.

How valid are some of these goals, really?

- These are two **highly exclusive** schools.
- They ***admit*** that they use factors such as race to **distinguish between otherwise qualified applicants**.
- Many qualified applicants are **rejected**.
- Couldn't a solution be…**accepting more students**???

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Observations, cont.

- Harvard accepts only 1,600 undergraduate students per year, despite an annual operating budget of ***$6.4 billion*** and an endowment of ***$53 billion***.

- Perspective:
  - No Idaho state institution has an operating budget that is **even close to $1 billion**.
  - Boise State has a comparable total enrollment to Harvard with **nowhere near** the financial resources.
  - Idaho's **entire general fund appropriation** for FY 2025 is **$5.3 billion**.

Observations, cont.

- Are college admissions truly ***that*** zero-sum?
  - The "zero-sum" nature seems a bit artificial, considering the institutional resources.
- Is institutional prestige a worthwhile goal?
- Does leadership development require going to a prestigious institution?
  - Or any institution at all?

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Cornell > Harvard

"I would found an institution where ***any person*** can find instruction in ***any study***."

Ezra Cornell

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State Institutions

- Acceptance rates:
  - BSU: ~ 84%
  - ISU: ~ 99%
  - LCSC: ~ 87%
  - UI: ~ 79%

- Undergraduate enrollment:
  - BSU: ~ 24,000
  - ISU: ~ 11,000
  - LCSC: ~ 2,700
  - UI: ~ 7,800

Takeaways

- Idaho's state institutions of higher education are **not comparable** to the institutions in *SFFA v. Harvard*.
  - Idaho's institutions are close to open enrollment.
  - There isn't much need to distinguish between qualified applicants.

- The case is of limited, if any, relevance to Idaho's institutions.

- But avoid race-conscious decisions in **allocating institutional resources**.

Questions?

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