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Students for Fair Admissions Petitions SCOTUS to Take Up Suit Against Harvard's Race-Conscious Admissions

By Vivi E. Lu

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The anti-affirmative action group Students for Fair Admissions petitioned the United States Supreme Court Thursday to review a lower court's decision upholding Harvard's race-conscious admissions practices, marking the latest development in a nearly seven-year-long, high-profile legal battle that could determine the future of race-conscious admissions in higher education.

By filing a petition for a writ of certiorari, SFFA President Edward J. Blum said in a press release he hopes the Supreme Court will take up the lawsuit and side against Harvard.

"After six and one-half years of litigation, the hundreds of Asian-American students who were unfairly and illegally rejected from Harvard because of their race may soon have this lawsuit reviewed by the U.S. Supreme Court," Blum said. "It is our hope that the justices will accept this case and finally end the consideration of race and ethnicity in college admissions."

SFFA first filed suit against Harvard in 2014 in Massachusetts District Court, arguing that Harvard's race-conscious admissions violated Title VI of the Civil Rights Act of 1964, which bans institutions that receive federal funds from discriminating "on the grounds of race, color, or national origin." Harvard won the initial trial as well as an appeal to the First Circuit Court. The district court judge ruled in 2019 that Harvard does not discriminate against Asian-American applicants, and a pair of judges for the First Circuit affirmed that ruling in November 2020.

In a Thursday interview, Dean of Harvard College Rakesh Khurana defended the College's use of race-conscious admissions practices in order to achieve a diverse campus.

"As earlier court decisions have confirmed, our admissions policies are consistent with the approaches that the Supreme Court has already outlined," Khurana said. "We will continue to advance and defend the right of the College and other colleges and universities in this country to seek the educational benefits that come from bringing together a diverse group of talent."

Should the Supreme Court accept SFFA's petition, Harvard may find a new ally in the U.S. Justice Department under President Joe Biden. Former President Donald Trump's Justice Department filed a brief in support of SFFA, but legal experts have told The Crimson they expect the Biden administration to reverse that position.

While experts have previously said they expected SFFA to appeal to the Supreme Court, they are less convinced that the Court will take up the case.

Harvard Law School professor Noah R. Feldman '92 told the Crimson in January he believes it is "pretty unlikely" the Supreme Court will review the case. Feldman said past Supreme Court cases involving race in admissions have involved public universities, cases in which the constitutional issue is more clearly presented.

University of New Mexico law professor Vinay Harpalani and Dana N. Thompson-Dorsey, chair of education innovation at the University of South Florida, told the Crimson in January that if the Supreme Court were to take up the case, the practice of affirmative action could be endangered, noting the court's conservative composition.

In a press conference Thursday afternoon, Blum explained that SFFA's appeal presents two essential questions for the Supreme Court to consider: whether it should overturn the court's 2003 decision in *Grutter v. Bollinger* — a case allowing universities to consider race in its admissions to promote student diversity — and whether Harvard's race-conscious admissions practices violate Title VI.

"In essence, what we're asking the Supreme Court to do is to revisit their jurisprudence that was handed in, like I said, 2003, when the Supreme Court allowed the use of race in university admissions," Blum said. "Our argument is that that decision was wrong. And the court, as they often do, needs to go and overturn what they ruled two decades ago."

Blum said SFFA's second question in the appeal is focused more specifically on Harvard's consideration of race in admissions.

"Is Harvard violating Title VI by penalizing Asian-American applicants, engaging in racial balance over emphasizing race and rejecting workable, race-neutral alternatives?" Blum said. "And the energy behind that question is, has Harvard stepped out of the bounds that *Grutter* allowed them to use race — that is, their use of race as it pertains to admissions of Asian Americans? Has it exceeded what the law allows?"

Four justices must agree to SFFA's petition before the court takes up the case.

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