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## The Harvard Crimson interviews Vinay Harpalani: Supreme Court Delays Decision on Reviewing Harvard Admissions Lawsuit

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# Supreme Court Delays Decision on Reviewing Harvard Admissions Lawsuit

By Vivi E. Lu and Dekyi T. Tsotsong

**The Harvard Crimson**

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But therein lies the challenging part.

The Supreme Court on Monday requested input from the Biden administration on Students for Fair Admissions's lawsuit against Harvard's race-conscious admissions policies, likely extending the long-running legal battle for at least several more months.

The high court invited the acting Solicitor General to file a brief outlining the view of the federal government on the case, which could decide the future of affirmative action in college admissions. Though the Trump administration's Justice Department filed a brief on behalf of SFFA when the case was before the First Circuit, [most legal experts expect](#) the Biden administration to [reverse that position](#).

Supreme Court justices discussed SFFA's petition for a writ of certiorari [during their conference on Thursday](#) and chose to "call for the views of the Solicitor General" — known as a CVSG. It occurs in about 15 cases per year, according to a 2009 [article](#) in the Journal of Appellate Practice and Process.

The CVSG may delay a decision on the petition until the fall, though the case could still be heard during the Court's 2021-2022 term that begins in October.

Biden has yet to nominate a candidate for Solicitor General, and the Harvard case could potentially play a role in confirmation hearings. Elizabeth B. Prelogar is the current acting Solicitor General.

SFFA President Edward Blum wrote in an email that the Supreme Court's invitation for the government's input was expected by many legal observers.

"Students for Fair Admissions remains hopeful that, regardless of the views of the solicitor general, the justices will grant to hear our case and end race-based affirmative action in college admissions," he wrote.

Harvard College spokesperson Rachael Dane declined to comment on Monday's decision.

University of California, Berkeley law professor Andrew D. Bradt '02 said the Court's decision to call for the view of the acting Solicitor General was unsurprising.

"It's a high-profile case involving a very controversial issue, and so it's not unusual for the court to seek the Solicitor General's views," Bradt said.

However, he called the view of the acting Solicitor General "hard to predict."

"We don't have a permanent Solicitor General, so because we don't have a nominee, much less a confirmation, it's a little bit more of a mystery," Bradt said. "We don't really know what the department's position is going to be. In this case, I think that may be one of the reasons why the Court is seeking their views."

Vinay Harpalani, a law professor at the University of New Mexico, said SCOTUS' delay might mean it is "a little bit less likely" to take the case.

"A lot of experts, including me, didn't think the court was going to grant cert on this because there's a lot of other cases coming up," he said.

"It does seem to indicate that there are justices on the fence a bit who want to know more and are willing to delay the case, because we don't know when the Solicitor General will file their briefs," Harpalani said.

Harpalani said the Solicitor General's office "does not do this very quickly."

"It takes its time in filing a brief like this when there's a call for review for the Solicitor General," he said. "I would say no earlier than October, but quite likely December or January. They could push it far back enough that the Court does not hear the case until the 2022 to 2023 term."

SFFA filed the [petition](#) requesting the case be heard in the Supreme Court on Feb. 25, and Harvard filed its [brief in opposition](#) on May 17.

SFFA [first filed suit](#) against Harvard in 2014, arguing that Harvard's race-conscious admissions practices discriminate against Asian Americans and thus violate 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](#) in Massachusetts District Court, which ruled in October 2019 that Harvard's use of race-conscious admissions is legal, and the First Circuit [affirmed the ruling](#) in November 2020.

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