

1-24-2022

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Supreme Court agrees to hear Harvard affirmative action case, could cause ‘huge ripple effect’ in college admissions

Boston Globe

Laura Krantz and Deirdre Fernandes

January 24, 2022

The Supreme Court on Monday announced it will hear a case challenging Harvard University’s use of race in college admissions, a striking development that could lead to the demise of affirmative action.

The announcement is the latest chapter in a years-long legal saga that has sparked intense debate over diversity on college campuses and how institutions are allowed to go about achieving it. The court said it will hear the Harvard case during its next term, which begins in the fall, alongside a similar suit against the University of North Carolina, both brought by a group that contends the schools discriminate against white and Asian-American applicants.

Since the Harvard case was first filed in 2014, two lower federal courts have sided with Harvard, saying that race is an important factor to consider to ensure schools can achieve a diverse campus environment. In October, a federal district court judge also sided with UNC in a similar ruling. But the Supreme Court’s new conservative majority could mean that for the first time, the plaintiffs will find sympathy on the bench.

A decision to prohibit using race as a factor in admissions would be a major change for colleges and universities and could effectively end efforts by admissions offices to break down longstanding systemic barriers that have made it difficult for marginalized groups to attend elite institutions.

“This has the potential of having huge ripple effect in college admissions, and huge effects on the access agenda in America,” said Angel Perez, president of the National Association for College Admission Counseling.

The case comes as most higher education institutions are working harder than ever to reduce barriers to admissions for students of color and other underrepresented groups, including first-generation and low-income students.

“If the Supreme Court then lays into the law of the land that race can’t be used at all, it will make it even more difficult to open the doors wider for underrepresented students in this country, and particularly for African American students,” Perez said.

The cases against Harvard and UNC were brought by Students for Fair Admissions. In both cases, it alleged that the universities' admissions policies discriminate against Asian American and white applicants.

Edward Blum, the organization's president, issued a statement applauding the court's acceptance of the cases.

"It is our hope that the justices will end the use of race as an admissions factor at Harvard, UNC, and all colleges and universities," he said in the statement.

Students for Fair Admissions has argued that Harvard admits Asian Americans at lower rates, given their share in the applicant pool. The group has also contended that Asian Americans score lower on the personal rating, which Harvard uses to measure qualities such as courage, kindness, and leadership.

Harvard has said it considers dozens of factors in offering admissions, including academics, extracurriculars, and family background.

In his statement, Blum said he believes that "in a multi-racial, multi-ethnic nation like ours, the college admissions bar cannot be raised for some races and ethnic groups but lowered for others. Our nation cannot remedy past discrimination and racial preferences with new discrimination and different racial preferences."

Harvard president Lawrence Bacow also issued a statement in response to the news, saying the Supreme Court's review "puts at risk 40 years of legal precedent granting colleges and universities the freedom and flexibility to create diverse campus communities."

"Considering race as one factor among many in admissions decisions produces a more diverse student body which strengthens the learning environment for all," Bacow said, expressing support for the two federal courts' findings and adding that Harvard will continue to "defend vigorously its admissions practices."

"Harvard does not discriminate; our practices are consistent with Supreme Court precedent; there is no persuasive, credible evidence warranting a different outcome," his statement said.

The [most recent ruling](#) in the Harvard case came in November 2020, when the US First Circuit Court of Appeals affirmed that the university did not discriminate against Asian-American applicants. That decision backed a prior ruling by US District Judge Allison D. Burroughs, who in 2018 presided over a trial that lasted more than three weeks.

Burroughs, in a 130-page [decision in 2019](#), offered a robust defense for the continued use of race in admissions. Although the judge said that Harvard's admissions process could be improved with more training and monitoring to avoid potential implicit bias, she called the process "very fine" and legally sound.

At the center of this new development is the rinefashioned Suprveme Court. Three justices appointed by then-president Trump drastically changed the court's makeup,

and it is now far more conservative than in 2016, the last time it heard an affirmative action case and upheld the use of race as a factor in admissions.

Justices John Roberts, Samuel Alito, and Clarence Thomas have expressed a desire to strike down the legal precedent upholding race-conscious admissions. Legal experts have said that if the court agreed to hear the Harvard case, it would send a strong signal that they have the votes to end the practice.

Rachel Moran, a law professor at the University of California Irvine and an expert on higher education and affirmative action, said it's "shocking" that the court took on affirmative action, when it is already considering other hot-button cases, including abortion.

Despite several challenges over more than 40 years, the court has consistently allowed colleges to consider race as a factor in admissions, if the policies are narrowly tailored and the institution has considered other race-neutral alternatives.

In the past, justices have ruled that affirmative action was necessary to help create more diverse campuses that promoted a greater exchange of ideas and offered young people more access to elite institutions that nurtured future leaders, Moran said.

"They control the pathways to national leadership," Moran said. "Look who is on the court, who has been president."

Six of the nine justices earned their undergraduate degree from Ivy League institutions, including Roberts, who went to Harvard. Five US presidents received their undergraduate degrees at Harvard.

Harvard has already said that if it abandoned race-conscious admissions, African-American and Hispanic representation would decline by nearly half.

Still, the Supreme Court could surprise the country, said Vinay Harpalani, an associate law professor at the University of New Mexico School of Law, possibly curbing the use of affirmative action rather than ending it altogether.

"Even if Harvard and UNC's policies are ruled unconstitutional, it will be interesting to see the justices' opinions and how much they limit affirmative action," Harpalani said in an e-mail. "The question is just how far will they go?"

The announcement sparked strong reactions from advocates on both sides of the issue.

Jeannie Park, a Harvard graduate and co-founder of the Coalition for a Diverse Harvard, whose members testified on Harvard's behalf in the 2018 trial, said she hopes that the increased awareness in this country about systemic racism will mean that people will see these attacks for what she believes they are -- an attempt by those on the political right to discriminate against people of color.

Hans von Spakovsky, a senior legal fellow at the Heritage Foundation, a conservative think tank, applauded the decision, saying the practice of considering race is not only immoral but violates civil rights. Von Spakovsky said students today do not deserve to be “punished” for racist admissions policies of the past.

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