



**Northern Illinois
University**

Students for Fair Admissions, Inc.

v.

Harvard and

the University of North Carolina, et al

The Use of Race in College Admissions

Research and Innovation, Legal and Legislative Affairs Committee Meeting
August 24, 2023

Overview



- Brief Discussion of the Case
- The Supreme Court's Holding
- The Latest Guidance from the Department of Education in Response to the Supreme Court Decision
- Practical Considerations for Colleges and Universities

The Lawsuit



- Students for Fair Admissions (SFFA) sued Harvard College over its admissions process, alleging that the process violates Title VI of the Civil Rights Act of 1964.
- Harvard admitted that it uses race as one of many factors in its admissions process but argued that its process adheres to the requirements for race-based admissions outlined by the Supreme Court in *Grutter v. Bollinger*.

The Lawsuit (Cont.)



- Students for Fair Admissions (SFFA) also sued the University of North Carolina (UNC) over its admissions process, alleging that the process violates the Fourteenth Amendment by using race as a factor in admissions.
- UNC admits that it uses race as one of many factors in its admissions process but argues that its process adheres to the requirements for race-based admissions outlined in the Supreme Court's decision in *Grutter*.

The Court's Decision



- On June 29, 2023, the U.S. Supreme Court issued its ruling in *SFA v. Harvard* and *SFA v. UNC* and found that Harvard and the University of North Carolina's affirmative action programs violated the Fourteenth Amendment's Equal Protection Clause and Title VI of the Civil Rights Act of 1964.

The Court's Holding



Specifically, the Court held:

- Consideration of an applicant's racial status is prohibited;
- The educational benefits of diversity supported by race conscious admissions is not a compelling interest;
- Diversity is not sufficiently measurable and could not be subjected to meaningful judicial review;
- The admissions programs disadvantaged some racial groups;
- There was no logical end point where a court could determine whether diversity had been achieved;
- Although an applicant's race may not be considered in admissions, it is permissible for an applicant, through personal statements or essays, to discuss how race has impacted their lives.

Department Of Education (DOE)



- Dear Colleague Letter
- DOE Guidance

What the Court Failed to Address in its Opinion



- Scholarships and Financial Aid
- Outreach and Recruitment
- Pipeline and Pathways Programs
- Data Collection
- Employment
- Race Neutral Strategies

Department of Education Guidance and Advice



- Colleges can still legally work to diversify their student bodies through targeted recruitment efforts, including using race, and by redoubling retention efforts aimed at supporting students of color once they arrive on campus. Officials also said that bridge and pathway programs for high schoolers aimed at diversifying applicant pools are still legal.
- The Court's decision does not require institutions to ignore race when identifying prospective students for outreach and recruitment, provided that their outreach and recruitment programs do not provide targeted groups of prospective students preference in the admissions process.
- The DOE also clarified that the Supreme Court ruling did not make it illegal for institutions to collect demographic data on applicants, nor did it prohibit admissions officers from looking at that data—as long as they did not consider it when making admissions decisions.

What the DOE Guidance Failed to Clarify



- There is no mention of how the Supreme Court decision might apply to the consideration of race in hiring. (Affirmative Action)
- There is no reference to how the Supreme Court's decision impacts race-conscious scholarships.

Considerations for Colleges and Universities



- The use of race in admissions is no longer permitted, and colleges and universities will need to find race neutral alternatives.
- What race neutral alternatives are permitted is still unclear.
- Neither the Supreme Court nor the Department of Education clearly articulated whether federal financial aid and race conscious scholarships are still permitted.

Considerations for Colleges and Universities (Cont.)



- Future implications for the use of race in employment decisions. (Affirmative Action).
- Legacy Admissions – Do legacy admissions violate Title VI of the Civil Right Act?

Questions



The Office of General Counsel for Northern Illinois University

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