

MAKING SENSE OF...

AFFIRMATIVE ACTION IN HIGHER EDUCATION

WHAT YOU NEED TO KNOW

- In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, the U.S. Supreme Court ruled that the admissions process followed by Harvard and UNC at Chapel Hill violated the Equal Protection Clause of the 14th Amendment to the Constitution. This decision reverses 45 years of legal precedence that permitted the consideration of race as one of many factors in admissions decisions at public and private institutions, widely termed affirmative action. (See *Regents of the University of California v. Bakke*, 438 U.S. 265 313 (1978), *Gratz v. Bollinger*, 539 U.S. 244 (2003), *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas*, U.S. 579 (2016).)
- Affirmative action rose out of the Civil Rights Movement to remedy longstanding discrimination against minority groups by creating practices to provide members of these groups with access to educational and employment opportunities. Affirmative action covers characteristics such as race, disability, gender, ethnic origin, and age.
- For higher education, affirmative action is the practice of considering a student's race or ethnicity in the admissions process for the purpose of promoting diversity on campus.
- To examine the constitutionality of a law or policy under the 14th Amendment, the Court applies a "strict scrutiny" standard, meaning the challenged practice is justified by a "compelling interest." In the past, achieving a racially diverse student body to enrich learning met this standard (other justices, in past concurring opinions, also noted the interests of educating a diverse workforce and military personnel). The practice or policy also needs to be the "least restrictive means" for achieving the desired goal.
- In this case, the Court not only said that race-conscious admissions is tantamount to racial discrimination; the justices seemed to view the internal workings of admissions offices as suspect ("unclear" measurability). Harvard and UNC failed to prove that their admissions practices were "narrowly tailored" for achieving their learning objectives.
- Three justices dissented. In her dissenting opinion, Justice Sotomayor observed, "... the Court cements a superficial rule of colorblindness as a constitutional principle in an endemically segregated society where race has always mattered and continues to matter."
- Ruling affirmative action in higher education as unlawful could have monumental effects on diversity efforts in admissions practices. Colleges and universities will have to navigate different avenues of achieving racial diversity without considering race. As seen in California, this change may dramatically impact the progress made in increasing racial diversity on campuses throughout the country.
- In 1996, California banned affirmative action with Proposition 209. Therefore, the admissions officers at the University of California Berkeley do not factor race into their evaluation process. According to Director for Undergraduate Admissions, Femi Ogundele, in a WBUR podcast: after the ban, diversity in their admitted students pool was cut in half, and despite what the university has invested in diversity efforts since their numbers have not come close to rebounding.

THE CONVERSATION

- Do you believe the U.S. Supreme Court's decision to outlaw affirmative action is fair and just? Why or why not?
- What alternative practices or policies to affirmative action can address systemic inequalities and promote diversity in higher ed?
- How might this decision affect underrepresented populations in terms of access to education and opportunities (i.e., employment, housing, and social mobility)?
- Should states have the authority to implement their own affirmative action policies despite the Supreme Court's decision?
- Will this decision exacerbate or perpetuate existing disparities and injustices?
- How do affirmative action and legacy admissions compare to each other? Should legacy admissions be outlawed?

READING LIST

- [Affirmative Action](#), Legal Information Institute, Cornell Law School
- [What Will Happen Without Affirmative Action in Colleges?](#), The 19th
- [Rejection of Affirmative Action Draws Strong Reactions From Right and Left](#), The New York Times
- [Supreme Court Gets Rid Of Affirmative Action In College Admissions](#), Forbes
- [Legacy College Admissions Under Scrutiny Again After Supreme Court Ruling on Affirmative Action](#), PBS News Hour