

KEY FACTS

Students for Fair Admissions, Inc. v President and Fellows of Harvard College

BACKGROUND

Harvard College's admissions policy, which uses race as one factor among many when determining its incoming class, has been under attack for years by anti-affirmative action activist Edward Blum and his organization, Students for Fair Admissions (SFFA), in their attempt to challenge diversity and end the consideration of race in college admissions. After losing twice in federal court, SFFA petitioned the Supreme Court to hear the Harvard case, which the Court will do in October 2022, along with a related case, also filed by SFFA, involving the University of North Carolina.

KEY POINTS:

- **For more than 40 years, the Supreme Court has established and repeatedly affirmed that race can be one of many factors considered in college admissions as a critical means to create diverse campus communities that benefit all students.**

Harvard's admissions policy considers race as one factor among many in a whole-person review of each applicant. The Supreme Court has twice cited Harvard's admission process as a model for how other colleges and universities can consider race consistent with the law and the Constitution. Harvard's qualified, limited use of race is entirely consistent with more than four decades of Supreme Court precedent, established in *Bakke* (1978), affirmed in *Grutter* (2003), and reaffirmed in *Fisher I* (2013) and *Fisher II* (2016). The Supreme Court and lower courts have consistently ruled that colleges and universities may retain the ability to consider race as one of many factors for admission to create the diverse campus communities critical to their educational missions.

In Bakke, Justice Powell noted that "the attainment of a diverse student body ... clearly is a constitutionally permissible goal for an institution of higher education." Regents of Univ. of California v. Bakke, 438 U.S. 265, 311–12 (1978). "The atmosphere of 'speculation, experiment, and creation' so essential to the quality of higher education—is widely believed to be promoted by a diverse student body. ... [I]t is not too much to say that the nation's future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples." Id. at 312-313.

"[T]he Equal Protection Clause does not prohibit the ... narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body." Grutter v. Bollinger, 539 U.S. 306, 343 (2003).

"Diversity 'cultivat[es] a set of leaders with legitimacy in the eyes of the citizenry', 'promotes cross-racial understanding', 'helps to break down racial stereotypes', 'prepare[s] students for an increasingly diverse workforce and society.'" Fisher v. University of Texas at Austin, 579 U.S. ____ (2016).

- **Two federal courts ruled in Harvard's favor, overwhelmingly rejecting every argument put forward by SFFA.**

On October 1, 2019, after a three-week trial with extensive evidence and testimony from 30 witnesses, a U.S. District Court ruled that Harvard does not discriminate and that its limited consideration of race complied with Supreme Court precedent. On November 12, 2020, a two-judge panel from the First Circuit Court of Appeals upheld the decision. SFFA failed to provide evidence to support its legal claims, instead pushing inaccurate and misleading information and flawed legal arguments that were rejected in this case. SFFA is repeating the exact same claims, trying to pretend that those claims were not tested at trial and rejected.

Quotes from Judge Allison Burroughs' decision:

"The students who are admitted to Harvard and choose to attend will live and learn surrounded by all sorts of people, with all sorts of experiences, beliefs and talents. They will have the opportunity to know and understand one another beyond race, as whole individuals with unique histories and experiences. It is this, at Harvard and elsewhere that will move us, one day, to the point where we see that race is a fact, but not the defining fact and not the fact that tells us what is important, but we are not there yet. Until we are, race conscious admissions programs that survive strict scrutiny will have an important place in society and help ensure that colleges and universities can offer a diverse atmosphere that fosters learning, improves scholarship, and encourages mutual respect and understanding."

"[T]he Court finds that Harvard has met its burden of showing that its admissions process complies with the principles articulated by the Supreme Court in Fisher II, 136 S. Ct. at 2208, and concludes that judgment must issue for Harvard on each of the remaining claims."

- **Dozens of groups including students, Asian-American advocacy organizations, businesses, civil rights groups, universities, and economists, among others, support Harvard, and reject SFFA's anti-diversity arguments.**

Twenty-five Harvard student and alumni organizations together filed one amicus brief in support of Harvard, and several current and former students, represented by the Asian Americans Advancing Justice, the Lawyers' Committee for Civil Rights, and the NAACP Legal Defense & Educational Fund, testified during the trial about the importance of a diverse student body. Other supporters include the Asian American Legal Defense and Education Fund, the American Council on Education, the Anti-Defamation League, leading economists and social scientists, and businesses including Apple, General Electric, Intel, Microsoft, and Verizon. SFFA did not produce a single student at trial to testify on its behalf.

Quote from Asian Americans Advancing Justice:

"Amid a national reckoning with anti-Asian racism, we know that discrimination is not a relic of the past and continues to pervade and distort the lived experiences for people of color in this country every day. Affirmative action, diversity, and anti-discrimination programs, are essential to opening up opportunities for women and people of color, including Asian Americans, in higher education and all aspects of public life, and have been foundational building blocks for a more just and equitable society."

- **Americans widely support diversity, affirmative action.**

Diversity is more important than ever, because to succeed in our diverse society and a globalized world, people need to know how to work with individuals with different backgrounds, life experiences, and perspectives. Recent surveys show that the majority of Americans agree with this sentiment. A 2021 survey from Gallup showed that 62% of American adults support affirmative action, reinforcing findings from a 2017 Pew survey where 71% of Americans said efforts to create diverse student bodies were “a good thing.”

Quote from business amicus brief in Harvard case, including Amgen Inc., Apple Inc., Applied Materials Inc., General Electric Company, Gilead Sciences, Inc., Glaxosmithkline LLC, Intel Corp., Micron Technology Inc., Microsoft Corporation, Twitter Inc., Verizon Services Corp., and VIIV Healthcare Company:

“A university ‘prepares students for an increasingly diverse workforce and society.’ People educated in such environments are ready to contribute to the inclusive environment [businesses] need: They are prepared to listen to others’ ideas, to build consensus, and to think expansively. They are able to integrate different perspectives, thereby approaching problem-solving in a more open-minded and creative way. These cognitive benefits translate directly to the business world, where rigorous critical thinking and creative problem-solving skills are crucial. And diverse higher education environments foster not only cognitive skills, but also socio-cognitive skills such as leadership that are essential to [business] success.”

- **Diverse educational experiences are critical to preparing all students to succeed in an increasingly diverse workplace and world.**

The Supreme Court has consistently recognized that a class that is diverse on multiple dimensions, including on race, transforms the educational experience of students from every background and prepares graduates for an increasingly pluralistic world. Learning across differences is critical to navigating and resolving those differences. Colleges need the freedom and flexibility to create diverse learning communities that prepare all students to succeed in the workplace and the world.

Quote from Ruth Simmons, President of Prairie View A&M University:

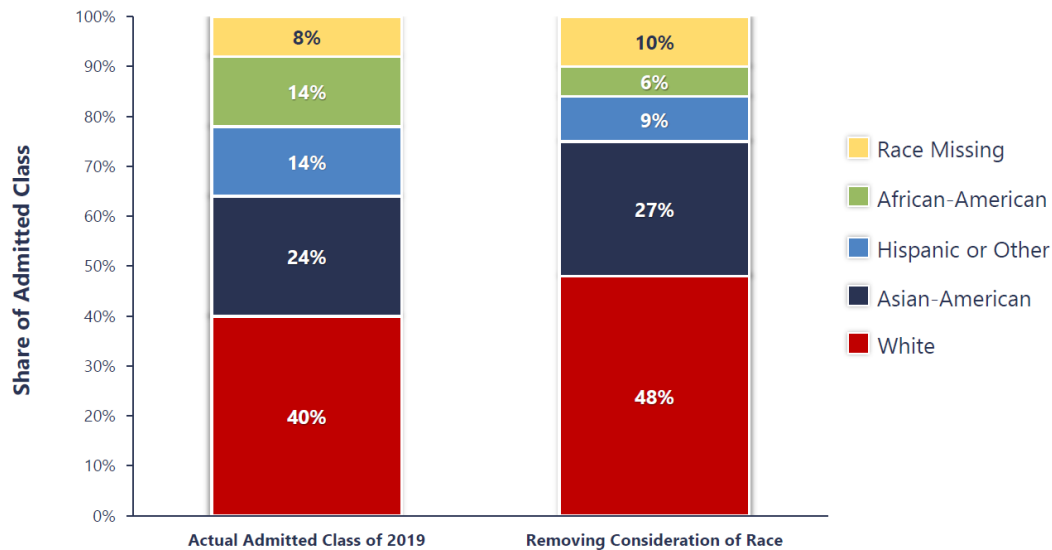
“It is not enough for students to learn passively; they must have their assumptions and ways of thinking challenged. The presence of diversity in the classroom provides that opportunity and makes for stronger and more effective participants in the human project.”

KEY STATS:

- The percentage of Asian Americans in the admitted class has grown significantly by 27% since 2010; Asian Americans comprise nearly 28% of the admitted class of 2026.
- Harvard College receives and reviews more than 60,000 applications each year for approximately 2,000 offers of admission to an incoming class.
- Based on modeling from the Class of 2019, if Harvard were to stop considering race, the percent of the class that is African American would drop from 14% to 6%, and the percent that

is Latinx would drop from 14% to 9%. The percent that is Asian American would increase slightly from 24% to 27%.

Effect of Removing Race Consideration



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IMPORTANT DATES:

May 2, 2022	Students for Fair Admissions Opening Brief
May 9, 2022	Amicus Briefs in Support of SFFA
July 25, 2022	Harvard University and University of North Carolina Response Briefs
August 1, 2022	Amicus Briefs in Support of Harvard and UNC
August 24, 2022	SFFA Reply

OTHER RESOURCES:

[Harvard Admissions Case website](#)

[Harvard Admissions Process overview](#)

[Recent interview with lead trial counsel William F. Lee '72](#)