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Can institutions of higher learning use race as a factor in admissions?

Students for Fair Admissions v. *Harvard College* 600 U. S. 181 (2023)

Harvard College[1] has a very rigorous undergraduate admissions process. It begins with a student's admissions packet being read by a faculty member, called a "reader," who gives the application a score for 6 evaluated categories: academic, extracurricular, athletic, school support, personal, and overall. The "overall" category has 5 components, one of which is race. After the applications have gone through this scoring process the College's subcommittees are the next step in the evaluation. Each subcommittee, in their assessment of the applicants, submits recommendations for the top students to the final selection committee. However, the subcommittees do consider race as well in their stage of the process. Finally, the applications that have made it this far appear before the full admissions committee which consists of 40 members. At this final stage, race is again considered through discussions on finding the correct racial breakdown of the incoming class. The goal of this analysis is to obtain the most desirable ratio of races at the school in order to ensure a proper level of diversity.

In 2013 Students for Fair Admissions (SFFA) filed suit against Harvard College for violating Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the 14th Amendment with their race-influenced admissions process. The District Court of Boston overturned the plaintiff on the grounds of not enough evidence in 2019. The case was appealed and the First Circuit Court of Appeals which ended in affirming the District Courts verdict in 2020. SFFA then petitioned the Supreme Court in 2021 and was granted certiorari.

Because of the long history of race-education cases with the Supreme Court and the large mass of approved legislation on the subject this case was very complicated. However, there were basically three questions of law. (1) Does Harvard fail to define their race-based admissions in a manner measurable enough to allow it to be judged? (2) Does Harvard's admissions program use race as a negative and/or stereotype? (3) Does Harvard's admission's process have a "logical end point" as made necessary in *Grutter*? 539 U. S., at 342.

The Supreme Court found many problems with Harvard's admissions process in these three areas. First of all, the use of race in admissions was found to be severely lacking in measurability "to permit judicial [review]." *Fisher* v. *University of Tex. At Austin*, 579 U. S. 365, 381. Secondly, because college admissions are a zero-sum game, by balancing out race quotas Harvard is negatively labeling applicates based on their race. Additionally, by admitting students "on the basis of race, it [Harvard] engages in the offensive and demeaning assumption that [students] of a particular race, because of their race, think alike." *Miller* v. *Johnson*, 515 U. S. 900, 911-912. Finally, Harvard's admissions process lacks the "logical end point" which *Grutter*

[1] This case also included the University of North Carolina (UNC) as an identical suit from SFFA on race-based admissions practices. For the sake of simplicity further reference to UNC is omitted in this brief as the suit, argumentation, and verdict were identical.

requires. 539 U. S., at 342. In answer to these arguments the court ruled in favor of SFFA in a vote of 6 to 3.

Justice Roberts wrote the majority opinion as outlined above in which Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barett joined. There were three additional concurring opinions written by Kavanaugh, Gorsuch, and Thomas. Justices Sotomayor and Jackson wrote dissenting opinions to the effect that in order to prevent racial bias in society race cannot be ignored.