The United States Supreme Court's Decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*

On June 29, 2023, the United States Supreme Court addressed the following issue: (1) whether the race-based admissions programs at Harvard College ("Harvard") and the University of North Carolina ("UNC" and together with Harvard, the "Respondents") violate the Equal Protection Clause of the Fourteenth Amendment ("Equal Protection Clause") and/or Title VI of the Civil Rights Act of 1964[1] ("Title VI").[2] In a 6-3 decision delivered by Chief Justice Roberts, the Court determined that the Respondents' admissions systems failed each of the criteria set forth by the strict scrutiny standard (set forth below) and therefore must be invalidated under the Equal Protection Clause.[3]

BACKGROUND AND PROCEDURAL HISTORY

Petitioner, the Students for Fair Admissions, Inc. ("SFFA"), filed separate lawsuits against Harvard and UNC claiming that their race-based admissions systems violated Title VI and the Equal Protection Clause.[4] The Respondents used a similar race-conscious admissions process that viewed race as a "plus" factor.[5] Although the admissions systems considered race, which was characterized by the Court as "invidious in all contexts,"[6] the Respondents argued that it was based on a holistic approach that was necessary to create and reap the benefits of a "diverse student body."[7] The Respondents argued that their race-conscious admissions processes were required in order to, among other things, prepare students to "adapt to an increasingly pluralistic society," "better educate its students through diversity," and promote "the robust exchange of ideas."[8] The Court acknowledged that while these goals were important, they did not survive a strict scrutiny analysis and the Court struck down the Respondents' admissions systems.[9]

THE COURT'S DECISION

1. Whether the admissions systems used by Harvard and UNC are lawful under the Fourteenth Amendment and Title VI.

To survive a strict scrutiny analysis, racial classifications must be "narrowly tailored" to "further a compelling governmental interest."[10] All entities covered by the Equal Protection Clause or Title VI must comply with the strict scrutiny standard for racial classifications.

The Equal Protection clause applies to States and state actors but does not regulate the conduct of private parties.[11] Title VI covers more than just state actors; it also applies to recipients of federal funds.[12] The Court has consistently held that Title VI is coextensive with the Equal Protection Clause and "discrimination that violates the Equal Protection Clause of the Fourteenth Amendment committed by an institution that accepts federal funds also constitutes a violation of Title VI."[13] Although the Harvard admissions program would typically be challenged under Title VI, the Court evaluated both lawsuits under the standards of the Equal Protection Clause.[14] The Court articulated three reasons why the Respondents' admissions systems violated the Equal Protection Clause:

First, the Court stated that the Respondents' race-based admissions programs did not survive a strict scrutiny analysis.[15] The Court explained that the Respondents' racial categories were overbroad, arbitrary, or undefined and underinclusive and failed to demonstrate that their admissions systems created a diverse student body.

Second, the Court claimed that the Respondents' race-based admissions systems did not comply with the Equal Protection Clause's "twin commands" that race may "never be used as a 'negative'" or "operate as a stereotype."[16] The Court noted that "[c]ollege admissions are zero-sum. A benefit provided to some

applicants but not to others necessarily advantages the former at the expense of the latter."[17] The Court further reasoned that admitting students on the basis of race, perpetuates the "offensive and demeaning" assumption that students of a particular race think alike because of their race, which was contrary to the "core purpose" of the Equal Protection Clause.[18]

Third, the Court determined that the admissions programs lacked a "logical end point" as required by the Supreme Court in *Grutter v. Bollinger*.[19] The admissions programs "effectively assure[d] that race will always be relevant . . . and that the ultimate goal of eliminating race as a criterion will never be achieved."[20]

Although the Court barred the use of race as a "plus" factor in the admission process, the ruling still permits private and public universities and colleges to consider an applicant's discussion of how race affected his or her life.[21] However, the Court clarified that any benefit an applicant receives "must be treated based on his or her experiences as an individual—not on the basis of race." [22]

In the dissent, written by Justice Sotomayor and joined by Justice Kagan and Justice Jackson, the Court emphasized that nothing in the Constitution prohibits institutions from considering race in the admissions process to ensure racial diversity in higher education.[23] The dissent pointed out that the Equal Protection Clause "enshrines a guarantee of racial equality," which the Court has previously and consistently enforced through "race-conscious means."[24]

The dissent rejected the majority opinion stating that it "subvert[ed] the constitutional guarantee of equal protection by further entrenching racial inequality in education, the very foundation of our democratic government and pluralistic society."[25] The dissent continued by stating that the "[majority] opinion [was] not grounded in law or fact and contravene[d] the vision of equality embodied in the Fourteenth Amendment."[26] The dissent urged colleges and universities to "continue to use all available tools to meet society's needs for diversity in education."[27]

CONCLUSION/IMPLICATIONS

Universities and colleges subject to the Equal Protection Clause and/or Title VI may no longer use race as a consideration in the admissions process to create a diverse student body. Although the *SFFA* ruling does not directly apply to independent schools, the possible implications should be considered.

Under current law, independent schools who do not receive federal funding are not directly implicated by the *SFFA* ruling because they fall outside the purview of Title VI. However, their race-conscious admissions systems may be challenged on grounds other than Equal Protection or Title VI violations, and there may be other federal and state laws which could be interpreted to prohibit discrimination on the basis of race, ethnicity, and color.[28]

In addition, two recent decisions in Maryland and California district courts held that an independent school's tax-exempt status under 501(c)(3) constitutes federal financial assistance, which requires the school to comply with Title IX of the Education Amendments Act of 1972 ("Title IX").[29] The Maryland decision is currently being challenged in the Fifth Circuit Court of Appeals. These two rulings are not binding on Connecticut or Massachusetts state or federal courts, but they suggest that similar cases may arise in other jurisdictions and the reasoning could potentially be extended to require independent schools to comply with Title VI and the *SFFA* decision.

The *SFFA* ruling may also have an impact on business hiring practices. Title VII of the Civil Rights Act ("Title VII"), which applies to employers with at least 15 employees, operates similarly to Title VI. Under Title VII, employers may not consider race in their hiring process, but in practice the majority of

employers have implemented diversity, equity, and inclusion programs ("DEI"). There could be legal challenges to corporate hiring practices and DEI initiatives under Title VII along the same lines of reasoning in the *SFFA* decision.

It is uncertain how far and in what manner the *SFFA* decision will be extended, but it is important for independent schools and employers alike to work with legal counsel to evaluate and revise their policies, if necessary, as the admissions and hiring landscape continues to change. Many schools have already issued communications reinforcing their commitment to diversity, equity, and inclusion in light of the Supreme Court's decision.

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[1] Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U. S. C. §2000d.
[2] *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College,* No. 20-1199, No. 21-700, 600 U.S. (June 29, 2023).
[3] *Id.*
[4] *Id.*
[5] *Id.* at 4.
[6] *Id*. at 22.
[7] *Id*.
[8] *Id*. at 23.
[9] *Id*.
[10] *Id*. at 15. (Narrow tailoring requires courts to examine whether a racial classification is necessary or whether race neutral alternatives could adequately achieve the government interest).
[11] *Id*. at 23.
[12] *Id*.
[13] *Id*. at 6 (*citing Gratz v. Bollinger*, 539 U.S. 244, 276 (2003)).
[14] *Id.*
[15] *Id.* at 22.
[16] *Id.*
[17] *Id*. (claiming that Respondents' consideration of race led to fewer white and Asian American students being admitted).
[18] *Id.* at 29-30.
[19] *Id*. (referring to *Grutter v. Bollinger* which held that if a racial classification is a "deviation from the normal of equal treatment of all racial and ethnic groups" and must therefore be "a temporary matter" or "limited in time." *Grutter v. Bollinger*, 539 U.S. 306, 326-7 (2003)).
[20] *Id*. at 32.
[21] *Id*. at 40.
[22] *Id*.

[23] *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College,* No. 20-1199, No. 21-700, 600 U.S. (June 29, 2023) (Sotomayor, J., dissenting).
[24] *Id.* at 1. (Sotomayor, J., dissenting).
[25] *Id.* at 2. (Sotomayor, J., dissenting).
[26] *Id.* (Sotomayor, J., dissenting).
[27] *Id.* at 69. (Sotomayor, J., dissenting).
[28] For example, challenges may be brought under 42. U.S.C. § 1981.
[29] *See Buettner-Hartsoe v. Baltimore Lutheran High Sch. Ass'n, No. CV RDB-20-3132,* 2021 WL 2580385; and *E.H. v. Valley Christian Acad.*, 616 F. Supp. 3d 1040 (C.D. Cal. 2022).