The Use of Race in US Admissions is Not Over, Unless We Let It

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Abstract
After *Students for Fair Admissions v. Harvard* (2023), people are likely to think race is scrubbed from college admissions processes. This interpretation is a misunderstanding of the new legal reality in the United States. We offer two sources of hope outlining the path forward for educational leaders, parents, and students.

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People in and outside of the United States are likely to think race has now been scrubbed from admissions processes at colleges and universities. University presidents, newspaper headlines, and political pundits alike framed the ruling that admissions policies at Harvard University and the University of North Carolina violate the principles of the Fourteenth Amendment as the (unsurprising) death of affirmative action policies at the hands of a conservative-leaning United States Supreme Court.

Historical and National Context

To believe applicants' race can no longer be a part of college admissions processes is a misconstrual of the new legal reality in the United States. Further, it is a misunderstanding of the practice of race-conscious admissions policies, originally a deliberate remedy addressing decades of racial discrimination. The use of race in college admissions sprung into United States higher education by the promise of the United States Supreme Court's precedent in their 1954 landmark decision in *Brown v. Board of Education*. The case asserted that racially segregated schools were inherently unequal and violated the equal protection clause of the United States Constitution's Fourteenth Amendment.

Purposeful efforts to racially integrate schools were eroded through subsequent cases that stripped the original intent and spirit of *Brown v. Board of Education*, relegating the use of race in college admissions to a narrow window—used only to advance broad notions of diversity, requiring institutions to strive for "race-neutral" approaches, and leaving white women as the greatest beneficiaries of affirmative action policies. Despite the erosion, scholars have found that the intentional use of race in admissions is the most effective method to advance racial diversity in college admissions, and that other efforts, such as lotteries or substituting the use of race with socioeconomic status, are not as effective.

However, conservative activists rejoicing in the recent United States Supreme Court ruling rely upon the public's superficial understanding of race-conscious admissions specifically—and affirmative action policies more broadly—to spread the misinformed idea that using race in admissions is now wholly unconstitutional. This approach also instigates a dangerous ripple effect across a range of educational activities beyond selective college admissions, which started shortly after the issuance of the court's decision, such as Missouri's attorney general's guidance to the state's public institutions to "immediately cease their practice of using race-based standards to make decisions about things like admission, scholarships, programs and employment."

Proclamations that "affirmative action is over" in the United States betrays the reality that there are, in fact, paths forward to ensure students' racial identities are erased neither from colleges' admissions processes nor institutions' broader efforts to achieve racial equality and diversity in the United States.

We offer two sources of hope that sketch the path forward for educational leaders, parents, and students to better understand the new terms of engagement set forth by the court's decision.

The Court's Opinion is Narrow

An expansive, and warranted, interpretation of the court's ruling is that the decision itself is narrow in scope. From the onset, the court frames the problem before it as one solely concerning admissions by relying extensively on the use of the word *applicant*

throughout its opinion and repeatedly discussing the court's view that *college admissions* are zero-sum. The majority opinion is focused on this narrow problem throughout and deviates only to inform this very issue regarding admissions.

This leaves open the door for higher education institutions to be less directly affected by this ruling regarding other race-conscious policies in higher education. Efforts such as targeted recruitment programs to increase the racial diversity in institutions' applicant pools and other programmatic interventions supporting students of color while in college remain unaffected. However, these other efforts will require institutions to allocate and expend substantial resources.

Race Can Still Be Considered in Admissions

The court explicitly notes that "nothing prohibits universities from an applicant's discussion of how race affected the applicant's life, so long as that discussion is concretely tied to a quality of character or unique ability that the particular applicant can contribute to the university." That is, institutions of higher education may still consider race in admissions in narrow situations, when race is discussed as part of other "color-blind" factors that are (paradoxically) shaped by an applicant's race. As the court notes, this might include an applicant describing how racial discrimination led them to develop courage and determination or how an applicant's culture or heritage led the applicant to develop leadership skills. In other words, institutions can still consider race so long as such consideration is tied to some "color-blind" trait (albeit informed by it). What the court prohibits is the overt use of race.

Chilling Ripple Effects

There are, however, downstream effects to the ruling that counteract efforts to advance racial diversity in the new legal landscape. Misinformation about the ruling and its scope has begun to abound and can lead to confusion about what the law allows and prohibits. More broadly, research has shown that laws can have a chilling effect such that educational leaders who perceive a hostile legal environment will self-censor to avoid a lawsuit or reprisal, even when the law permits them to act in equity-affirming ways.

Moreover, it is important to contextualize the ruling within a broader sociopolitical context. Educational rights in the United States and around the world continue to be politicized and rolled back via the courts and legislation. Hostile conservative movements will continue to seek further regressive measures and undo progress for racially marginalized students. Higher education policies that consider race will likely face backlash.

Concluding Thoughts

While the United States Supreme Court continues down a dangerous path that facilitates future dismantling of rights for people who have been historically oppressed, true to form—and representative of the contemporary conservative movement—Chief Justice Roberts and his majority opinion co-opt civil rights language once used to advance the rights of Black people and other historically oppressed communities to undo these very rights. The court's majority opinion erroneously enshrines "color-blindness" into the understanding of equal protection law. These interpretations will continue to loom over issues of equality under the law in future cases.

There is nothing to celebrate about a misguided ruling that, as Justice Sonia Sotomayor stated in her dissent, "is grounded in the illusion that racial inequality was a problem of a different generation." The rigorous empirical evidence cited across the dissenting opinions from the three liberal justices of the court unequivocally affirm that racial inequality continues to plague the nation. Yet, our collective understanding of the options available to respond to the curtailment of progress is vital, lest we wish to succumb to the allure of despondence as we continue down the long road towards racial justice. ◢

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